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No. 2504

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A CORPORATION,

Plaintiff in Error,

VS.

JOHN A. PARKER,

Defendant in Error.

TRANSCRIPT OF RECORD.

Upon Writ of Error to the District Court of the
United States for the District of Oregon.

RECEIVED

OCT 19 1914

F. D. MONCKTON,
CLERK

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Clerk.

No. _____

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*United States Circuit Court of Appeals, for the Ninth
Circuit.*

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Plaintiff in Error.

vs.

JOHN A. PARKER,

Defendant in Error.

Names and Addresses of the Attorneys of Record.

JOHN D. GOSS, Marshfield, Oregon, for the Plain-
tiff in Error.

WM. T. STOLL, Marshfield, Oregon, and ISHAM
N. SMITH, Mohawk Building, Portland, Ore-
gon, for the Defendant in Error.

In the District Court of the United States, for the District of Oregon.

JOHN A. PARKER,

Plaintiff.

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation.

Defendant.

Citation.

United States of America,—ss.

The President of the United States, to John A.
Parker.

Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the city of San Francisco in the state of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office in the district court of the United States for the district of Oregon, wherein you are plaintiff and defendant in error, and the C. A. Smith Lumber and Manufacturing Company is defendant and plaintiff in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

2 *C. A. Smith Lumber & Mfg. Company.*

Witness, the Honorable Robert S. Bean, Judge of the United States District Court, in and for the district of Oregon, this 28th day of August, 1914.

R. S. BEAN,
District Judge.

Service of the within Citation and receipt of a copy thereof, admitted, this 31st day of August, 1914.

WM. T. STOLL,
Attorney for John A.
Parker, Plaintiff in
Lower Court, and
Defendant in Error.

Filed September 4, 1914. G. H. Marsh, Clerk.

Writ of Error.

In the Circuit Court of Appeals for the Ninth Circuit.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,
Plaintiff in Error.

vs.

JOHN A. PARKER,

Defendant in Error.

United States of America,—ss.

The President of the United States to the Judge of the District Court of the United States, for the District of Oregon,

Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between John A. Parker, Plaintiff and Defendant in Error, and C. A. Smith Lumber and Manufacturing Company, a corporation, Defendant and Plaintiff in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States should be done.

4 *C. A. Smith Lumber & Mfg. Company.*

Witness the Honorable Edward Douglas White,
Chief Justice of the Supreme Court of the United
States this 28th day of August, 1914.

G. H. Marsh, Clerk of the District Court of the
United States for the District of Oregon.

[Seal, U. S. District Court,
District of Oregon.]

State of Oregon,
County of Coos,—ss

I, Herbert S. Murphy, being first duly sworn, on
oath depose and say that I am upwards of twenty-
one years of age; that on the 8th day of September,
1914, at Marshfield, Coos County, Oregon, I served
the within writ of error on William T. Stoll, the
attorney for John A. Parker, defendant in error,
by delivering and leaving with Miss Elvira Frizeen,
clerk and stenographer for said William T. Stoll,
at his office in the First National Bank Building,
Marshfield, Oregon, a true copy thereof.

Subscribed and sworn to before me this the 8th day
September, 1914.

[Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

Filed August 28, 1914. G. H. Marsh, Clerk,
United States District Court, District of Oregon.

*In the District Court of the United States for the
District of Oregon.*

November Term 1913.

Be it remembered, that on the 27th day of December 1913, there was duly filed in the District Court of the United States for the District of Oregon, a Transcript of Record from the Circuit Court of the State of Oregon for Multnomah County, in words and figures as follows, to wit:

Transcript on Removal.

*In the Circuit Court of the State of Oregon, for the County
of Multnomah.*

Complaint.

JOHN A. PARKER,

Plaintiff.

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Defendant.

The plaintiff for a cause of action against the defendant alleges that:

1. The defendant is now, and was at all times herein mentioned, a corporation, duly created under the laws of the State of Minnesota, and authorized to do business within the State of Oregon, having

complied with the laws of the State of Oregon, with reference to foreign corporations desiring to do business therein and was, and still is, operating two large saw-mills on Coos Bay, near the City of Marshfield, Coos County, Oregon.

2. The plaintiff at the times herein mentioned, was a skilled mill-wright, having served his apprenticeship with a master mill-wright as such continuously from his thirteenth year to his twentieth year, and thereafter following his trade or occupation of mill-wrighting in Canada and at different places in the United States for the period of more than six years, until receiving the injuries hereinafter mentioned.

3. In the month of December, 1908, plaintiff was in the employ of the defendant, at its saw-mill called the C. A. Smith mill, as a mill-wright, earning and capable of earning and receiving Thirty-five cents per hour; and as a part of the contract of employment between plaintiff and defendant, it was provided that the defendant should, and thereafter it did, retain out of plaintiff's earnings One Dollar per month, for medical and hospital charges, for which the defendant agreed to furnish the plaintiff, during his employment by it, with medical and surgical services of physicians and surgeons, and hospital care and attendance that might be necessary, on account of any sickness, disease or accident, resulting or contracted by the plaintiff while in the defendant's employ.

4. On December —, 1908, while the plaintiff was so engaged in the performance of his duties as a mill-wright, he was injured in his left leg, which injury he attributed to the negligence and carelessness of the defendant, and so notified the defendant and its officers; whereupon, pursuant to his contract of employment, as aforesaid, the defendant's physician and surgeon was called to attend and treat him, and thereupon treated him in a negligent, careless and unskillful manner, so that as a result thereof he became infected with blood-poisoning; and thereafter, and as a result of such injury, and such negligent treatment of defendant's physician and surgeon, on the 6th day of February, 1909 plaintiff was required to have his entire right hand amputated.

5. On account of the matters and things contained in the last two paragraphs, the plaintiff claimed to have a cause of action against the defendant for damages, for the loss of his hand and the humiliation of being a cripple resulting therefrom, for the pain and suffering incident to such sickness, and for loss of time, all due, as he claimed and charged, to the fault and negligence of the defendant.

6. In the month of May, 1909, the defendant made and entered into an agreement with the plaintiff, by the terms of which the plaintiff signed a release in writing, discharging the defendant from all liability on account of the said accident, and all liability of the defendant arising therefrom, the defendant then and there paying the plaintiff Two Hundred Dollars in cash, and agreeing orally

with the plaintiff, as a further consideration for such release, to give him employment so long as he wanted it, at any work in the defendant's said mills, that the plaintiff could do, that is to say, to measure lumber in the yard, or to operate a trimmer, or to act as time-keeper, or to look after the stores, and would pay the plaintiff therefor the going wages, i. e. the same wages as was paid to other men for the same services, which agreement was assented to by the plaintiff, and defendant in all particulars, and was accepted by the plaintiff in satisfaction and discharge of his said cause of action.

7. Thereupon and pursuant to such agreement, the plaintiff entered the employ of the defendant, filling a number of different positions for the period of about eight months, whereupon he was permanently put in charge of a trimmer, which is an automatic machine that trims up all the board lumber that goes through the mill, and which is a machine that can be operated by a man with one hand, and continued in that position continuously until the 31st day of January, 1913, and the plaintiff otherwise well and truly performed all of the conditions of the said contract upon his part, to the satisfaction of the defendant and its officers. The going wages paid by the plaintiff to trimmers, that is to say, operating the machine heretofore described as a trimmer, was, and still is, Three and 50-100 Dollars per day; and plaintiff was capable, at the time of his discharge, and still is capable, of running such trimmer, and of earning the wages paid to a trimmer. He was

at all such times, and still is, capable of acting as a time-keeper, or of looking after the stores, and was, and still is, capable of measuring lumber in the yards; and was, and still is, capable of earning the wages paid to men for those several employments, Three and 50-100 Dollars per day.

8. At all of the times herein mentioned, the defendant was, and still is, running its saw-mills, employing men to measure lumber in the yards, as time-keepers, as trimmers, and to look after their stores, but although the plaintiff was ready and willing and able, and has ever since been ready and willing and able to perform either of the services theretofore performed by him, or any other services exacted of him by the defendant, the defendant, on the 31st day of January, 1913, in violation of its said agreement with the plaintiff, and without any cause whatsoever, unlawfully and fraudulently discharged the plaintiff, and has ever since and still refuses, to give him employment of any kind, or to otherwise in any manner perform their said contract with the plaintiff.

9. The plaintiff is thirty-one years of age, and has a natural expectancy of thirty-nine years more of life; he is a mechanic and has no means of earning a livelihood except with his hands; he has no employment, and on account of his crippled condition is unable to procure employment.

10. By reason of the breach of defendant's contract with the plaintiff, i. e. the unlawful acts here-

inbefore set forth, plaintiff has been damaged in the sum of Thirty Thousand Dollars.

WHEREFORE, the plaintiff prays judgment against the defendant for the sum of Thirty Thousand Dollars, and the costs and disbursements of this action.

ISHAM N. SMITH,
Attorney for Plaintiff.
Portland, Oregon.

State of Oregon,
County of Multnomah,—ss.

I, Isham N. Smith, being duly sworn on my oath say, I am the attorney for the plaintiff in the above entitled action; I have read the foregoing complaint, know the contents thereof, and believe the same to be true. I make this affidavit because and for the reason that the plaintiff is not at this time within this county.

ISHAM N. SMITH.

Subscribed and sworn to before me this 31st day of October, 1913.

[Seal]

M. A. HINES,

Notary Public for Oregon.

[Endorsed] Filed Oct. 31, 1913. Jno. B. Coffey,
Clerk, by T. S. Wells Deputy.

SUMMONS

In the Circuit Court of the State of Oregon for the County of Multnomah.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY,

Defendant,

To C. A. Smith Lumber & Manufacturing Company:

In the Name of the State of Oregon; you are hereby required to appear and answer the complaint filed against you in the above entitled suit within ten days from the date of the service of this summons upon you, if served within this county, or if served within any other County of the State, then within twenty days from the date of the service of this summons upon you; and if you fail to answer for want thereof, the plaintiff will take judgment against you for the sum of Thirty Thousand (\$30,000.00) Dollars and costs.

ISHAM N. SMITH,
Attorney for Plaintiff.

State of Oregon,
County of Coos,—ss.

I, W. W. Gage, Sheriff of said State and County, do hereby certify that I served the within Summons within said State and County, on the 12th day of November, 1913, on the within named defendant C. A. Smith Lumber & Manufacturing Company by personally delivering a copy thereof prepared and certified to by Isham N. Smith, one of the Attorneys for the plaintiff, together with a copy of the complaint prepared and certified to by Isham N. Smith, one of attorneys for the plaintiff, to David Nelson, Managing Agent of the defendant C. A. Smith Lumber & Manufacturing Company personally and in person.

W. W. GAGE,
Sheriff of Coos County,
State of Oregon.

Received Nov. 3, 1913. W. W. Gage, Sheriff,
By C. A. Gage, Deputy. [Endorsed]

Filed Nov. 17, 1913,

Jno. B. Coffey, Clerk,

By T. S. Wells, Deputy.

NOTICE OF PETITION.

*In the Circuit Court of the State of Oregon in and for
the County of Multnomah.*

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

To John A. Parker, plaintiff above named, and to
W. T. Stoll, his attorney,

You will please take notice that a Petition for
Removal of the above entitled cause to the District
Court of the United States for the District of Ore-
gon, on behalf of the defendant, the C. A. Smith
Lumber & Manufacturing Company, a corporation,
together with the bond for removal required by law,
copies of which said Petition and Bond are made
a part hereof, and herewith served upon you, will
be filed in the above named Court and cause on the
1st day of December, 1913.

JOHN D. GOSS,

J. C. KENDALL,

Attorneys for Defendant.

State of Oregon,
County of Multnomah,—ss.

Service of the within notice is hereby accepted in Multnomah County, Oregon, this 1st day of December, 1913, by receiving a copy thereof, duly certified to as such, by John D. Goss, Rights reserved.

Attorney for Dft.

I. N. SMITH,
Attorney for Pltf.

[ENDORSED]

Filed Dec. 1, 1913,

Jno. B. Coffey, Clerk,

By T. S. Wells, Deputy.

PETITION FOR REMOVAL.

*In the Circuit Court of the State of Oregon in and for
the County of Multnomah.*

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

To the Honorable Circuit Court of the State of Oregon in and for the County of Multnomah:

Your petitioner, the C. A. Smith Lumber and Manufacturing Company, respectfully shows:

1. That your petitioner is a party to the above

entitled action, and is the sole defendant therein, and said action as appears from the complaint on file therein is of a civil nature and is brought by the plaintiff in the above entitled court for the recovery of damages in the sum of Thirty Thousand (\$30,000.00) Dollars for an alleged violation of a contract alleged in said complaint to have existed between the plaintiff and defendant.

2. That there is in said action a controversy between the plaintiff and your petitioner in which the matter in dispute exceeds exclusive of interests and costs the sum or value of Thirty Thousand (\$30,000.00) Dollars so demanded in said complaint.

3. That the said plaintiff in said complaint claims in substance that by the express terms of an agreement entered into in the City of Marshfield in the month of May, A. D. 1909, the said defendant promised and agreed in consideration of the discharge and release of an alleged liability due on account of an injury to the said plaintiff, that the defendant would give the plaintiff employment as long as he desired it in the sawmills of said defendant, and also paid to said plaintiff the sum of Two Hundred (\$200.00) Dollars.

4. That the above entitled action is now pending in the Circuit Court of the State of Oregon in and for the County of Multnomah, and no proceedings have been taken by your petitioner therein other than entering and filing of this petition and bond for removal in said cause.

5. That at the time of the commencement of the said action, your petitioner, C. A. Smith Lumber

and Manufacturing Company was, ever since has been, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota, and it is a citizen and resident of the State of Minnesota, and at all times mentioned was, and now is, a non-resident of the State of Oregon.

6. That the plaintiff above named in said cause of action was at the time of the commencement of said action and at all times herein mentioned, and now is, a citizen and resident of the State of Oregon.

7. That in this action there is a controversy wholly between citizens of different states, and which can be fully determined as between them, that is to say, between said plaintiff John A. Parker, a citizen of the State of Oregon, on the one hand, and the C. A. Smith Lumber and Manufacturing Company, a corporation, a citizen of the State of Minnesota the other, and your petitioner is actually interested therein as appears from said complaint.

8. That service of summons herein was made upon your petitioner in the County of Coos, State of Oregon, and not otherwise or upon any other person; that said service was made on the 12th day of November, 1913; that your petitioner at the time of the service of summons was not and is not required by the laws of the State of Oregon, or the rules of this court to answer or plead to the complaint of this plaintiff prior to a date subsequent to the date on which this petition is filed.

9. That no special bail was or is required in said action.

10. That your petitioner offers herewith its bond,

with good and sufficient surety in the penal sum of \$1,000.00 for its entering in said District Court of the United States in and for the District of Oregon within thirty days from the date of filing of this petition, a certified copy of the record in such action and for paying of all costs that may be awarded by the said District Court of the United States if said Court shall hold said action was wrongfully or improperly removed thereto.

WHEREFORE, Your petitioner prays this Honorable Court to proceed no further herein, excepting to accept said bond as sufficient, to make its said order for the removal of said cause as required by law, and to cause the record herein to be removed into said District Court of the United States, in and for the District of Oregon, and for such other and further order as may be proper.

Dated this 20th day of November, 1913.

C. A. SMITH LUMBER and
MANUFACTURING COMPANY
By DAVID NELSON, Cashier.

JOHN D. GOSS,
J. C. KENDALL,
Attorneys for Defendant.

State of Oregon,
County of Coos,—ss.

I, David Nelson, being first duly sworn, on oath depose and say: That I am the duly appointed Cashier of the C. A. Smith Lumber and Manufacturing Company, defendant herein, that I make this affidavit on its

behalf, and that I have read the foregoing petition, know the contents thereof, and that the same is true as I verily believe.

DAVID NELSON,

Subscribed and sworn to before me this 20th day of November, 1913.

[Notarial Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

State of Oregon,
County of Multnomah,—ss.

Due service of the within petition for removal is hereby accepted in Multnomah County, Oregon, this 1st day of December, 1913, by receiving a copy thereof, duly certified to as such by John D. Goss, attorney for dft. Rights reserved.

I. N. SMITH,
Attorney for Pltff.

[Endorsed [

Filed December 1, 1913.

JNO. B. COFFEY,
Clerk.
By T. S. Wells,
Deputy.

Bond on Removal

*In the Circuit Court of the State of Oregon in and for
the County of Multnomah.*

JOHN A. PARKER,

Plaintiff.

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Defendant.

Know All Men By These Presents: That we, the C. A. Smith Lumber and Manufacturing Company, a corporation, organized and existing under and by virtue of the laws of the State of Minnesota, as principal, and David Nelson, as surety, are held and firmly bound unto the above named plaintiff John A. Parker, in the sum of One Thousand (1,000.00) Dollars, lawful money of the United States of America, for the payment of which well and truly to be made to the said obligee, we bind ourselves, our, and each of our heirs, administrators, and successors, jointly and severally by these presents:

Witness our hands and seals this the 20th day of November, 1913.

The Condition of the foregoing obligation is such that Whereas the said C. A. Smith Lumber and Manufacturing Company has petitioned the Circuit Court of the State of Oregon, in and for the County of

Multnomah, for the removal to the District Court of the United States in and for the District of Oregon, of a certain cause, action, or proceeding, therein pending, and wherein John A. Parker is plaintiff and wherein C. A. Smith Lumber and Manufacturing Company, a corporation of the State of Minnesota is defendant;

Now Therefore, If the said C. A. Smith Lumber and Manufacturing Company, said petitioner, shall enter in said District Court of the United States in and for the District of Oregon within thirty days from the filing of said petition for removal in this court, a certified copy of the record in said cause, action, or proceeding, and shall well and truly pay all costs that may be awarded by said District Court of the United States, if said court shall hold that said cause, action, or proceeding was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and effect.

C. A. SMITH LUMBER and
MANUFACTURING COMPANY,

By DAVID NELSON, Cashier, [Seal]
Principal.

DAVID NELSON, [Seal]
Surety.

State of Oregon,
County of Coos,—ss.

I, David Nelson, surety named in the above bond, being first duly sworn, on oath depose and say that I am a resident and freeholder within the State of Oregon, and am worth the sum of Three Thousand (3,000.00) Dollars over and above all my just debts and liabilities, and exclusive of property exempt from execution or forced sale.

DAVID NELSON.

Subscribed and sworn to before me this the 20th day of November, 1913.

[Notarial Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

State of Oregon,
County of Multnomah,—ss.

Due service of the within Bond is hereby accepted in Multnomah County, Oregon, this 1st day of December, 1913, by receiving a copy thereof, duly certified to as such, by John D. Goss, Attorney for dft.
Rights reserved.

I. N. SMITH,
Attorney for.....

[Endorsed] Filed Dec. 1, 1913,

JNO. B. COFFEY,
Clerk.
By T. S. Wells,
Deputy.

Order for Removal.

Be It Remembered, That at a regular term of the Circuit Court of the State of Oregon, for the County of Multnomah, begun and held at the County Court House in the City of Portland, in the said County and State on Monday, the 1st day of December, A. D. 1913, the same being the First Monday in said month, and the time fixed by law for holding a regular term of said Court.

Present, Hons. JOHN P. KAVANAUGH, ROBERT G. MORROW, HENRY E. MCGINN, GEO. N. DAVIS, WILLIAM N. GATENS, and T. J. CLEETON, Judges.

Whereupon, on this Tuesday, the 23rd day of December A. D. 1913, the same being the 20th Judicial day of said term of said Court, among other proceedings the following was had, to wit:

No. D 8127.

Dept. No. 1.

*In the Circuit Court of the State of Oregon in and for
The County of Multnomah.*

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

The above named defendant, having on December 1, 1913, filed herein its petition praying the above

entitled Court for an order for the removal of the above entitled cause and to cause the record herein to be removed into the District Court of the United States in and for the District of Oregon, and,

IT APPEARING TO THE COURT that said defendant is the sole defendant to the above entitled cause, that said action is of a civil nature and is brought for the recovery of damages in the sum of Thirty Thousand Dollars (\$30,000.00), and that said sum is in controversy in said action between the plaintiff and the said defendant, that no proceedings have been taken in said action other than filing the said petition and a bond in the penal sum of One Thousand Dollars (\$1,000.00) for the removal of said cause, and,

IT FURTHER APPEARING TO THE COURT that said defendant at the time of the commencement of said action was, ever since has been and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Minnesota, and that it is a citizen and resident of the State of Minnesota and at all times mentioned was and now is a nonresident of the State of Oregon; and that during all of said times the plaintiff was and now is a citizen and resident of the State of Oregon; and that the aforesaid bond has been duly accepted and approved; and,

IT FURTHER APPEARING TO THE COURT that all of the representations set forth in said petition for removal are true;

IT IS NOW, THEREFORE, ORDERED AND ADJUDGED that the above entitled cause be removed from the Circuit Court for Multnomah County,

Oregon, and that said cause and the record herein be removed into the District Court of the United States in and for the District of Oregon, and that the clerk of this court be and he hereby is directed to certify said record in accordance with law and the practice of this court.

Dated this 23rd day of December, 1913.

[Sgd]

J. P. KAVANAUGH,

Judge.

Clerk's Certificate to Transcript on Removal.

*In the Circuit Court of the State of Oregon in and for
The County of Multnomah.*

State of Oregon,
County of Multnomah,—ss.

I, Jno. B. Coffey, County Clerk and Ex-Officio Clerk of the Circuit Court of the State of Oregon in and for the County of Multnomah, do hereby certify that the foregoing copies of Pleadings, Papers, Orders and Journal Entries constituting the entire record together with the Notice of Removal and Undertaking on Removal in the case of John A. Parker, Plaintiff, vs. C. A. Smith Lumber & Manufacturing Company, a corporation, Defendant, have been by me compared with the originals thereof, and that they are true and correct transcripts of such original Pleadings, Papers, Orders, Journal Entries. Notice of Removal and Undertaking on Removal as the same appear of record and on file at my office and in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court the 23rd day of December, 1913.

[Seal]

JNO. B. COFFEY,
Clerk.

By J. H. Bush,
Deputy.

Transcript filed December 27, 1913. A. M. Cannon,
Clerk.

And afterwards, to wit, on the 26th day of January, 1914, there was duly filed in said court, a Demurrer to Complaint, in words and figures as follows, to wit:

Demurrer.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

Comes now the defendant above named and demurs to the complaint in the above entitled action on the ground that it appears upon the face thereof that the same does not state facts sufficient to constitute a cause of action against the defendant and particularly in that:

1st, The same is contrary to the Statutes of the State of Oregon and particularly to Section 808 of

Lord's Oregon Laws,—Commonly called The Statute of Frauds,—in that it is based upon a purported promise of the defendant to answer for the debt, default or miscarriage of another, which said agreement appears in said complaint to have been entirely oral and not to have been in writing nor subscribed by the party to be charged nor by his lawfully authorized agent.

2nd, The same is contrary to said Statute in that it is based upon a purported oral agreement of the defendant which by the terms thereof was not to be performed within a year from the making thereof.

3rd, The same is contrary to the Statutes of the State of Oregon and particularly to Section 713 of Lord's Oregon Laws, and is an attempt to vary the terms of a written instrument by parole.

JOHN D. GOSS,
Attorney for Defendant.

State of Oregon,
County of Coos,—ss.

I, John D. Goss, the attorney for the defendant in the foregoing entitled action hereby certify that I served the foregoing Demurrer upon Isham N. Smith, attorney for the plaintiff therein on the 24th day of January A. D. 1914, at Marshfield, Coos County, Oregon, by then and there depositing a copy thereof duly certified to by me to be a correct copy thereof, in the U. S. post office at said place, duly addressed to him at his residence and P. O. Address at Portland,

Oregon, (enclosed in a sealed envelope, with the postage thereon fully prepaid.)

JOHN D. GOSS,

Attorney for Defendant.

Filed January 26, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on the 2nd day of February, 1914, there was duly filed in said Court, a Stipulation in words and figures as follows, to wit:

Stipulation.

In the District Court of the United States in and for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

It is hereby stipulated by and between the parties to the above entitled action and their respective attorneys that the Release in writing signed by the plaintiff and mentioned in paragraph numbered "6" on Page 2 of the Complaint herein, is in the words and figures following:

"For the sole consideration of the sum of Four Hundred Ten 75-100 Dollars, this 25th day of Sept. 1909, received from C. A. Smith Lumber & Mfg. Co., I do hereby acknowledge full satisfaction and

discharge of all claims, accrued or to accrue, in respect of all injuries or injurious results, direct or indirect, arising or to arise from an accident sustained by me on or about the 16th day of December, 1908 while in the employment of the above.

\$410 75-100 Signed J. A. PARKER, [Seal]
Witness, ARNO MERREEN,
Marshfield, Ore.
Witness, DAVID NELSON,
Marshfield, Ore.”

and, for the purposed of the Demurrer of the defendant to the complaint herein, this shall be taken as having been set out in said complaint as a part thereof.

WM. T. STOLL,
I. N. SMITH,
Attorney for Plaintiff,
JOHN D. GOSS,
Attorney for Defendant.

Filed February 2, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on Monday, the 9th day of March 1914, the same being the 7th Judicial day of the Regular March, 1914, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

No. 6240.

March 9, 1914.

Order Overruling Demurrer.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY.

This cause was submitted to the Court upon the demurrer of the defendant to the complaint herein, upon written briefs filed by the respective parties; on consideration whereof, it is Ordered and adjudged that said demurrer be and the same is hereby overruled.

And afterwards, to wit, on the 9th day of March, 1914, there was duly filed in said Court, an Opinion on Demurrer, in words and figures as follows, to wit:

Opinion.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY.

Memorandum on Demurrer to Complaint by BEAN,
District Judge:

This is an action to recover damages for breach of a contract of employment. It is alleged in the complaint that in December, 1908, while the plaintiff was employed by the defendant company, he received an injury which resulted in the loss of the right hand; that thereafter he and the company entered into an agreement of settlement, by the terms of which plaintiff signed a release in writing discharging the defendant from all liability on account of the accident for the consideration of \$200 and an oral agreement of defendant to give him employment so long as he wanted it at any work in defendant's mill which he was able to do; that in pursuance of such agreement the plaintiff entered the service of the defendant and continued to work for it, performing his work to its satisfaction, until January, 1913, when he was discharged, in violation of the agreement.

The defendant has demurred to the complaint on the ground principally that the release and settlement constitute a written contract, and cannot be varied by parole evidence showing an additional consideration from that stated therein.

Upon reading the complaint, my first impression was that the demurrer was well taken and that the receipt or acquittance should be treated as containing all the terms of the settlement, and consequently parole evidence was not admissible to

show an additional consideration from that stated therein. But I find the adjudged cases to be to the contrary. The holdings are that an acquittance not contractual in form is a mere receipt and is conclusive only as to the amount of money paid; that parole evidence is permissible to establish the parts of the contract, if any, not contained in the writing, unless the consideration as stated in the writing is contractual in its nature. It was so held in *Pennsylvania Company v. Dolan*, 32 N. E. 802, a case quite similar to the one at bar, and to the like effect in *Allen v. Tacoma Mill Company*, 51 Pacific 372, and the recent case in the State Supreme Court of *Holmboe v. Morgan*.

Demurrer overruled.

Filed March 9, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on the 20th day of March, 1914, there was duly filed in said court, an answer, in words and figures as follows, to wit:

ANSWER.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

Comes now the defendant above named and for

its answer to the complaint of the plaintiff in the above entitled action:—

I.

ADMITS the allegations contained in paragraph numbered 1 of said complaint, excepting that defendant DENIES that it is, or at the time the complaint herein was filed was operating more than one saw mill.

II.

ADMITS that the plaintiff was a mill wright, and had served an apprenticeship therein in the Dominion of Canada, and had worked as a mill wright at various places and for various periods of time prior to the time of the alleged injury in the complaint set forth.

III.

ADMITS that in the month of December, 1908, the plaintiff was in the employ of this defendant at its saw mill called the C. A. Smith mill, and ADMITS that by and with the consent of the plaintiff this defendant retained out of plaintiff's wages the sum of One Dollar per month and paid the same over to one George E. Dix, a physician and surgeon under a contract and agreement entered into and assented to by the plaintiff and by this defendant, and by the said George E. Dix whereby for said payment of One Dollar per month so retained out of plaintiff's wages, and paid to the said George E. Dix, by the defendant for the plaintiff, the said George E. Dix agreed to and was to furnish, and was furnishing the plaintiff with medical and surgical attend-

ance and hospital services during the period covered by said employment, but DENIES that the defendant as a part of the contract of employment, or otherwise, or at all agreed to provide the plaintiff with the services of a physician and surgeon or hospital care and attendance, and ALLEGES that said agreement was between the said George E. Dix and the plaintiff as above set forth, and not otherwise.

IV.

DENIES any knowledge or information sufficient to form a belief as to the injury or alleged injury to the plaintiff's left leg as set forth in paragraph numbered 4 of the complaint herein, and DENIES that said alleged injury was due to, or was contributed or claimed to be due to any negligence or carelessness of this defendant whatsoever, or that this defendant or its officers were so notified by the plaintiff or otherwise, and DENIES that the plaintiff was treated therefor in a careless or unskillful manner by the said Dr. Dix, or by or on behalf of the defendant or that as a result of any carelessness or unskillful treatment by the said George E. Dix, or by or on behalf of this defendant the plaintiff became infected with blood poison, and DENIES that plaintiff was required to have his right hand amputated as a result of such alleged negligence or negligent treatment, or at all.

V.

DENIES that the plaintiff claimed to have a cause of action against the defendant for damages

by reason of the matters contained and alleged in paragraph numbered 4 of said complaint.

VI.

ADMITS and ALLEGES that the plaintiff and defendant entered into an agreement in writing on the 25th day of September, 1909, which said agreement was in words and figures as follows, to-wit:

“For the sole consideration of the sum of Four hundred ten and 75-100 Dollars, this 25th day of September, 1909, received from C. A. Smith Lumber & Mfg. Co. I do hereby acknowledge full satisfaction and discharge of all claims, accrued or to accrue, in respect of all injuries or injurious results, direct or indirect, arising or to arise from an accident sustained by me on or about the 16th day of December, 1908, while in the employment of the above.

\$410 75-100 (Signed) J. A. PARKER [Seal]

Witness, ARNO MEREEN,
Address, Marshfield.

Witness, DAVID NELSON,
Address, Marshfield.

VII.

ALLEGES that said settlement so made as above set forth was the only settlement or agreement ever made between the plaintiff and defendant subsequent to the 6th day of February, 1909, and was the only release or settlement agreement ever executed by the plaintiff and the defendant, and was intended and understood by all the parties thereto to be and was a full and complete settlement of all the claim of the plaintiff against the defendant by

reason of any of the matters alleged in the complaint herein, and was intended to and did set forth the full consideration therefor.

VIII.

As a further and separate defence herein defendant ALLEGES that by reason of said written agreement and receipt the plaintiff is estopped to set up any other further promise, agreement, or consideration than the sum so set out and receipted therefor therein, and that the plaintiff is forbidden by the laws of the State of Oregon, and especially by Section 713 L. O. L. to vary the terms of said written agreement, and ADMITS that Mr. Arno Mereen, the general superintendent of defendant, voluntarily informed the plaintiff that as long as conditions were satisfactory and his work properly performed, he, on behalf of the defendant, would be glad to employ the plaintiff at such work as he could properly perform, but DENIES that said settlement or agreement was entered into upon consideration of any terms to that effect, or that as a part of, or an inducement to said settlement, any promise or agreement to that effect was made or entered into by or on behalf of the defendant, or that there was any promise or agreement or consideration whatsoever for said settlement other than that set forth and included in said writing above set forth.

IX.

ADMITS that the plaintiff, both before and after said settlement, was employed by the defendant, and filled numerous different positions, and that

he was employed for a time as trimmer in charge of a trimming machine in the mill of defendant: but DENIES that the plaintiff continued continuously in that position to the 31st day of January, 1913.

X.

As a further and separate defence thereto, the defendant ALLEGES that the plaintiff voluntarily, and of his own accord ceased to labor for or in the employment of the defendant, and without cause or reason cancelled his employment and contract of employment with the defendant and left the employ of the defendant on the 23rd day of September, 1911, and thereby terminated any and all agreements or claimed agreements of employmen theretofore existing or claimed to exist by and between the plaintiff and defendant.

XI.

DENIES that the going wages for trimmers are \$3.50 per day, and ALLEGES that for such employment in the County of Coos, State of Oregon, the said wages are and at all times in the complaint mentioned were from \$2.50 to \$3.00 per day according to the labor performed and the quantity of material handled, and that the regular or going wages for the work performed by the plaintiff upon the machine operated by the plaintiff and in the place occupied by him were at all times, have been, and now are \$3.00 per day, and the plaintiff while occupying said position was at all times paid the said wages of \$3.00 per day by the defendant.

XII.

ADMITS that the plaintiff at the time he quit

the employment of the defendant was, and at all times since has been, and now is capable of running a trimmer, and of earning the wages paid to a trimmer, and of acting as time keeper and of looking after the stores, and measuring lumber in the yards and was and still is capable of earning the wages paid to men for those several employments, and ADMITS and ALLEGES that the plaintiff was and is capable of following many other useful and gainful occupations and receiving compensation therefor, and of earning the sum of \$3.50 per day.

XIII.

ADMITS that the defendant was, and still is running a sawmill at or near the City of Marshfield, and giving employment to men to measure lumber, and act as time keeper, and trimmer, and to look after stores, but ALLEGES that the mill plant in which the plaintiff was employed was at the said time, and ever since has been, and now is shut down, and not in operation, and DENIES that the plaintiff was on the 31st day of January, 1913, or at any time, ready and willing to perform any of the services above mentioned, for the defendants, and ADMITS that the defendant has not employed the plaintiff since said date.

XIV.

Further answering, and as a further defence herein, the defendant ALLEGES that since the 31st day of January, 1913 the plaintiff has been employed at various gainful occupations and ever since said date has been employed in business, and earning

\$3.00 per day, and more, and DENIES that the plaintiff has been or is without employment, or unable to procure employment.

XV.

Further answering, the defendant DENIES each and every allegation in the complaint herein contained not hereinbefore admitted, qualified, or specifically denied.

JOHN D. GOSS,
JOHN C. KENDALL,
Attorneys for Defendant.

State of Oregon,
County of Coos,—ss.

I, David Nelson, being first duly sworn, on oath depose and say that I am Cashier of the defendant named in the within and foregoing answer, that I have read the same, know the contents thereof, and the same is true and correct as I verily believe.

DAVID NELSON.

Subscribed and sworn to before me this the 16th day of March, 1914.

[Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

State of Oregon,
County of Coos,—ss.

I hereby acknowledge due and personal service of the foregoing Answer in the within entitled cause on me this 17th day of March, A. D. 1914, by receipt

personally in Coos County, Oregon, of a duly certified copy thereof.

STOLL,

Attorney for Plaintiff.

Filed March 20, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on the 23rd day of March, 1914, there was duly filed in said Court, a Reply, in words and figures as follows, to wit:

Reply.

Rec'd Mar. 20, 1914.

In the District Court of the United States, for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

The plaintiff for reply to the answer of the defendant, says that:

1. He admits that he signed an instrument in writing, a copy of which is contained in paragraph six of said answer.

2. He denies each and every allegation contained

in said answer, not herein or in the complaint admitted of affirmatively alleged.

WM. T. STOLL,
307 Coke Building,
Marshfield, Oregon.
I. N. SMITH,
Corbett Building,
Portland, Oregon.
Attorneys for Plaintiff.

State of Oregon,
County of Coos,—ss.

I, Wm. T. Stoll, being duly sworn on my oath, depose and say: That I am one of the attorneys for the plaintiff in the above entitled action; I have read the foregoing Reply, know the contents thereof, and I believe the same to be true; I make this affidavit on the part of the plaintiff, because the plaintiff is now within Coos County, where I reside, nor is he within Multnomah County, within which this action is pending.

WM. T. STOLL.

Subscribed and sworn to before me this 19th day of March, 1914.

[Seal]

HARRY G. HOY,
Notary Public for Oregon.

State of Oregon,
County of Coos,—ss.

I hereby acknowledge due and personal service of the foregoing reply in the within entitled cause, on me this 19th day of March, 1914, by receipt per-

sonally in Coos County, Oregon, of a duly certified copy thereof.

JOHN D. GOSS,

of Attorneys for Defendant.

Filed March 23, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on the 18th day of June, 1914, there was duly filed in said Court, a Verdict in words and figures as follows, to wit:

Verdict.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER and MANUFACTURING COMPANY, A Corporation,

We, the jury in the above Court and cause, duly empaneled and sworn for our verdict say:

We find for the plaintiff, John A. Parker, against the defendant C. A. Smith Lumber and Manufacturing Company, and fix the amount of his recovery at Twenty-Five Hundred (\$2500.00).

J. N. BELLINGER,

Foreman.

Filed June 18, 1914, A. M. Cannon, Clerk.

And afterwards, to wit, on Thursday, the 18th day of June, 1914, the same being the 94th Judicial day of the regular March, 1914, term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

No. 6240
June 18, 1914.

Judgment.

In the District Court of the United States for the District of Oregon.

J. A. PARKER,

v

C. A. SMITH LUMBER and MANUFACTURING
COMPANY,

Now, at this day, come the parties hereto by their counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of this cause is resumed and said jury having heard the evidence adduced, the arguments of counsel and the charge of the Court, retire in charge of the proper sworn officers to consider of their verdict; and thereafter said jury return into court their verdict as follows, viz: "We, the jury in the above court and cause, duly empanelled and sworn for our verdict say, We find for the plaintiff John A. Parker,

against the defendant C. A. Smith Lumber and Manufacturing Company, and fix the amount of his recovery at Twenty Five Hundred (\$2500.00) J. N. Bellinger, Foreman" which said verdict is received by the Court and ordered to be filed; whereupon it is considered that said plaintiff do have and recover of and from said defendant the said sum of \$2500.00 together with his costs and disbursements herein, taxed at \$———and that execution issue therefor. Whereupon on motion of said defendant, it is Ordered that said defendant be and is hereby allowed sixty days from this date within which to submit a bill of exceptions herein and that in the mean time execution be stayed; and it is further ordered that the time within which defendant is allowed to file a motion for new trial herein be, and the same is hereby extended twenty days.

And afterwards, to wit, on the 8th day of July, 1914, there was duly filed in said Court, a Motion For New Trial with Affidavits Attached Thereto, in words and figures as follows, to wit:

Motion For New Trial.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

Comes now the above named defendant, by John D. Goss, its attorney, and upon the annexed affidavits, and upon the minutes, records and papers in the said trial, moves the court for and order herein setting aside the verdict and judgment heretofore rendered and entered herein, and granting to defendant a new trial of the above entitled cause, upon such terms and conditions as to the court may seem just; on the following grounds:

1st. That the defendant was prevented from having a fair trial by the failure of its witnesses to appear, and the refusal of the court to grant further time therefor.

2nd. By accident and surprise as follows, (a) that defendant and defendant's attorney were surprised by the refusal of the plaintiff and the plaintiff's attorney to allow the postponement of said trial until after the trial of the succeeding case, as had theretofore been agreed upon, (b) by the breaking down of the automobile upon which the witnesses Dresser, Mathison, and Rouke were coming to said trial, which prevented their arriving in time therefor as they otherwise would have done.

3rd. On account of newly discovered evidence, as Motion set forth in the affidavits hereto annexed and hereby made a part hereof.

4th. Insufficiency of the evidence to support or justify a verdict for the defendant, as follows. (a) in that there was no evidence showing how much the plaintiff was making or had been making or earn-

ing, since the breach of contract sued upon, (b) in that there was no evidence offered or submitted tending to show that the plaintiff had sought employment elsewhere or at all since the alleged breach of contract.

And further moves the Court that an order staying execution of judgment herein pending the decision of the foregoing motion for a new trial.

Respectfully submitted.

JOHN D. GOSS,
Attorney for Plaintiff.

AFFIDAVIT OF JOHN D. GOSS.

State of Oregon,
County of Coos,—ss.

I, John D. Goss, being first duly sworn on oath depose and say that I am, and at all times since the commencement thereof have been the attorney for the defendant C. A. Smith Lumber and Manufacturing Company in the foregoing entitled action;

That as such attorney I talked with W. T. Stoll, the attorney for the plaintiff therein, and was informed by him some weeks previous to the trial thereof that inasmuch as he and myself were interested as attorneys for the parties in several of the cases to be tried immediately succeeding this cause and in the same court, that he was willing and the plaintiff would be willing that the said cases be taken up in whatever order would best suit the convenience of the defendant;

That I communicated this arrangement to the de-

defendant C. A. Smith Lumber and Manufacturing Company, and relied thereon in arranging for said trial;

That I left Marshfield, Coos County, Oregon, on Thursday, the 4th day of June, and was busy thereafter in the supreme court of the state at Salem, in the above entitled court, and in the circuit court of Multnomah County, State of Oregon, until the trial of this cause, and did not return to Marshfield, Oregon, until the 26th day of June;

That I notified the witnesses in the several cases to be tried in the above entitled court to be present in Portland on the 17th of June; that I was occupied in the trial of a cause in the supreme court of the state of Oregon until late in the afternoon of the 16th day of June; that on returning to Portland, I discovered that all the witnesses required in the above entitled cause had not appeared, and that early on the morning of June 17th, I called up attorneys for the plaintiff and requested that the trial of the above entitled cause be postponed until after the trial of the next succeeding cause, i. e., the case of Marttila vs the Coos Bay Pulp & Paper Company, in which they appear as attorneys for the plaintiff, and I appeared as attorney for the defendant, but they then informed me that they would not consent to a change at that time; that I immediately, or as soon thereafter as possible, got into communication with the defendant company in the above entitled cause, and had the remaining witnesses, of whom I had any knowledge

at that time, to-wit: F. H. Dresser, Bernt Mathison, and George Rourke, at once start in an automobile for the railroad, at Roseburg; that their delay in coming was occasioned by the understanding of the defendant that this trial should be postponed to the trial of the other cause, and to the fact that I was not present in Marshfield at the time, to the further fact that communication with Marshfield is very difficult, uncertain, and hard to understand, and that telegraphic communication is somewhat slow and uncertain;

That I stated to the court that these witnesses were coming and should be there on the morning of the 18th, but was apprised by telegram on the morning of the 18th that their automobile had broken down, and that they had failed to reach the train, and would not reach Portland until 4:35 that afternoon.

That I did not know the plaintiff would deny the statements which these witnesses claimed he had made to them, and that I stated to the court that said witnesses had been this delayed, and asked that the case be held open pending their arrival; that the defendant and myself in conducting defendant's case, acted in entire good faith, and did not in any way endeavor to delay or prolong the same, as might legally have been done, but proceeded with that trial in an expeditious manner.

That I made careful inquiry of the various employees of the mill of defendant in general, and of the timekeeper, and of the mill foreman of the mill at which the plaintiff worked in an endeavor to pro-

cure all the witnesses who had knowledge of any facts bearing upon the case, or who would be proper witnesses for the defendant therein; but was unable to find any witnesses other than those present at the trial, and the persons who were delayed by the accident to the automobile and thus prevented from appearing at said trial, as appears from the several affidavits filed herewith; that the witnesses Johnson, Harrington, Molony, Dennison, Moore, Richardson, and Hardin were not known to me until after the trial of the above entitled cause, nor was I able to learn that they knew anything about the said cause, or would be witnesses at the same, and that they were only discovered since said trial by reason of the fact that they thought the same over, and that they could safely speak without being involved as witnesses therein.

That this affidavit is made for the purpose of the annexed motion for a new trial.

JOHN D. GOSS,

Subscribed and sworn to before me this the 6th day of July, 1914.

[Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

AFFIDAVIT OF A. L. BUTZ.

State of Oregon,
County of Coos,—ss.

I, A. L. Butz, being first duly sworn on oath depose and say that I am, and at all times since the commencement of the foregoing entitled action have

been the timekeeper of the C. A. Smith Lumber and Manufacturing Company, and as such came more in contact with all of the men employed by said company than any other employe thereof; that after the commencement of the foregoing entitled action, I was instructed by said company and by its attorney, Mr. John D. Goss, to look up the witnesses and evidence in respect thereto; and accordingly endeavored to find out from the men then employed by the company and from those who had been therefore employed, and from others the names of anyone who would know of the facts involved in said action and just what facts were known by said persons:

That I enquired generally of the employes of the East Side Mill at which Parker had worked, if they knew anything about his contract or claimed contract with the company, or about his working for or quitting work for the company, and addressed this inquiry to a great many of the men employed around the plant, and especially to those known to me to have been working there at the time Parker was employed there, to-wit, to the trimmermen, the tallymen, the graders, and slasher men, which employes worked near the point where said John A. Parker worked in said mill, but on account of the long lapse of time since said Parker was injured and since he quit the employment of said company, none of said men professed to know or remember anything about the same excepting Felix Kester, George Rourke, who were employed in said East Side Mill; that I

enquired of numerous of the other employes of the company in the West Side or main mill, and of all the foremen and bosses in both of said places, and the only persons who further professed any knowledge of said cause were F. H. Dresser and Bernt Mathison; that said Felix Kester was present at said trial, and said Rourke, Dresser and Mathison were prevented from attending by reason of the breaking down of the automobile conveying them to the railroad from the said City of Marshfield, as more fully appears from their affidavits submitted herewith; that since said trial and the judgment rendered therein has become known among the workmen employed in said plant, and in and about Marshfield generally, there has been considerable discussion thereof, men's memory have been refreshed thereby, and men who had otherwise refrained from stating or admitting that they had any knowledge thereof, have spoken about the facts as disclosed in several affidavits hereto annexed, as all of the men thought that the case was over, and they could not now be called as witnesses; that I was not able, and could not discover, prior to the trial of the cause, the several witnesses or the evidence of the several witnesses since discovered and set forth in the affidavits of the said several witnesses herewith submitted other than the evidence of said Dresser, Mathison, and Rourke, and that that portion of the evidence of said Mathison relative to statements made by Parker at the school meeting was not remembered or mentioned by said Mathison, nor discovered by me, prior to said trial.

That I make this affidavit for the purpose of the

annexed motion for a new trial and that I could not have discovered the new evidence since said trial by any amount of diligence before said trial.

A. L. BUTZ.

Subscribed and sworn to before me this 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF R. P. HARRINGTON.

State of Oregon,
County of Coos,—ss.

I, R. P. Harrington, being first duly sworn, on oath depose and say that I am and at all times in this affidavit mentioned was acquainted with John A. Parker;

That during the month of September, 1911, I was employed as sweeper in the basement of the plant known as the East Side Mill of the C. A. Smith Lumber and Manufacturing Company, and that while crossing the bay in a boat, one evening, John A. Parker told me he had quit his job as trimmerman, in said mill, that he had struck for more wages, and afterwards he told me that he had gone back to work again; and although he discussed the same with me both before and after the said time, that he quit, he never at any time mentioned that he had any con-

tract or agreement with the company whereby it had agreed to give him such employment.

R. P. HARRINGTON.

Subscribed and sworn to before me this 6th day of July, 1914.

[Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

AFFIDAVIT OF L. S. O'CONNOR.

State of Oregon,
County of Coos,—ss.

I, L. S. O'Connor, being first duly sworn, on oath, depose and say that I am a resident of Coos County, Oregon, residing at North Bend, in said County, and am not an employe of the C. A. Smith Lumber & Manufacturing Company, but that during the month of September, 1911, I was acquainted with the plaintiff John A. Parker in the foregoing entitled action, and at that time said Parker was working as a trimmerman in the plant known as the East Side Mill, of the C. A. Smith Lumber & Manufacturing Company, and during the month told me that he had struck for more pay, and would quit unless they gave it to him; but never at any time mentioned to me that he had any contract or agreement with the C. A. Smith Lumber & Manufacturing Company whereby it was bound to employ him.

L. S. O'CONNOR.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF WILLIAM C. HAYDEN.

State of Oregon,
County of Coos,—ss.

I, William C. Hyden, being first duly sworn, on oath depose and say that I am a resident of Marshfield, Coos County, Oregon, and in the year 1911 I was sawyer on the band gang saw in what is known as the West Side or big mill of the C. A. Smith Lumber & Manufacturing Company, and that at some time during the year, but the exact date or month I do not remember, Mr. John A. Parker, the plaintiff in the foregoing entitled action, and who was known to me, came into the place where I was working, and I asked him what the trouble was, that he was not working, in response to which he told me that he had quit on the other side,—meaning thereby the East Side, or small mill,—but that he had struck them for a raise and they would not give it to him; that he did not have to work for them, that he could make a living any way, and the said John A. Parker never at any time made any statement or claim to me that he had any contract or agreement with the Company whereby they were bound to employ him.

WILLIAM C. HYDEN.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF ALFRED JOHNSON

State of Oregon,
County of Coos,—ss.

I, Alfred Johnson, being first duly sworn on oath, depose and say that I am, and at all the times in this affidavit mentioned, have been a resident of Bunker Hill, Coos County, Oregon, and the janitor of the Bunker Hill school house, in said County, and that at all said times I have been acquainted with John A. Parker, the plaintiff in the foregoing entitled action; that I was present at said school house, at a school meeting held thereat in the month of September, 1911, and upon the steps of said school house said John A. Parker, in my presence and hearing, stated that he had quit working for the C. A. Smith Lumber and Manufacturing Company; that he wanted four bits a day more than they would pay him and he quit;

That said John A. Parker also stated to me after he had finally quit working for said Company that he was sorry he had not quit before, as he was making more money than he did before.

ALFRED JOHNSON.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF CHARLES DENNISON.

State of Oregon,
County of Coos,—ss.

I, Charles Dennison, being first duly sworn on oath depose and say that I am a resident of Coos County, Oregon, and at all times in this affidavit mentioned I was acquainted with John A. Parker, the plaintiff mentioned in the foregoing entitled action.

That during the month of September, 1911, I was employed as engineer at the plant known as the East Side Mill of the C. A. Smith Lumber & Manufacturing Company at which said plant said Parker was then employed as a trimmerman;

That some time during the said month, said Parker came to me and told me that he was going to "strike for more wages," that he had a cinch on the job and wanted \$3.50 per day, that he had it fixed so that they would have to give it to him; that soon thereafter he told me that he had quit his job; that he then was quite bitter in his statements against Felix Kester as said Kester had taken his job, and prevented him from getting his raise.

CHARLES DENNISON.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF J. P. MOLONY.

State of Oregon,
County of Coos,—ss.

I, J. P. Molony, being first duly sworn, on oath, depose and say that I am a resident of Coos County, Oregon, and at all times in this affidavit mentioned I was, and now am acquainted with John A. Parker, the plaintiff in the foregoing entitled action;

That during the month of September, 1911, I was employed as grader of lumber in what is known as the East Side Mill, of the defendant C. A. Smith Lumber and Manufacturing Company situated near Marshfield, Coos County, Oregon, which position as grader required me to grade the lumber as it came from the trimmer; that said John A. Parker was at said time also employed as trimmerman in said mill; that at one time during the said month, said John A. Parker came to me, and told me that he was going to quit in order to get better wages; that the next Monday thereafter said Parker was not at work in said mill; that thereafter the said Parker came and requested me to object to the manner in which the man who took his place was doing his work so that, as Parker explained, the company would be compelled to hire him, i.e., the said Parker, back again

to hold said position at the raised wages that he was demanding.

J. P. MOLONY.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF FRED MOORE.

State of Oregon,
County of Coos,—ss.

I, Fred Moore, being first duly sworn on oath depose and say that I am a citizen resident of Coos County, Oregon, and am acquainted with John A. Parker, and was acquainted with him during the year of 1911.

That during the entire month of September, 1911, I was working under a contract with C. A. Smith Lumber and Manufacturing Company, for the cutting of shingles at their mill known as the East Side Mill near the City of Marshfield, Coos County, Oregon;

That sometime during the said month, approximately the middle of said month, the said John A. Parker, informed me that he was going to quit work for the company, that unless they paid him \$3.50 per day

for the work he was doing on the trimmer, he would quit working for them;

That said John A. Parker, subsequently, and a few days thereafter informed me that he had quit working for them, and expressed himself as being angry at the man who took his place, as he said that otherwise he would have secured the raise he was seeking,

FRED MOORE.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF WALTER M. RICHARDSON.

State of Oregon,
County of Coos,—ss.

I, Walter M. Richardson, being first duly sworn, on oath depose and say that I am a resident of Bunker Hill, Coos County, State of Oregon, and am at all times in this affidavit mentioned was a police officer of the City of Marshfield, Coos County, Oregon;

That I am, and at all times herein mentioned was acquainted with John A. Parker the plaintiff in the foregoing entitled action, and that some time in the month of September, 1911, I was present at a school

meeting of the Bunker Hill School District, Coos County, Oregon, being at that time a director of said school district, and that said John A. Parker, was also present at said meeting;

That immediately after said meeting, and while standing on the steps of the school house, I asked said John A. Parker how things were running at the mill, in response to which he said in effect that he did not know anything about it; I then asked him what the matter was, and he said that they would not pay him within fifty cents of what he wanted, and he quit.

WALTER M. RICHARDSON,

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF BERNT MATHISON.

State of Oregon,
County of Coos,—ss.

I, Bernt Mathison, being first duly sworn, on oath depose and say that I am a resident of Coos County, Oregon, and during all the times in this affidavit mentioned was, and now am, the yard foreman for the C. A. Smith Lumber & Manufacturing Company, at its plant in the City of Marshfield, Oregon;

That during all said times I was and am now acquainted with John A. Parker, the plaintiff in the

foregoing entitled action; that some time in the fall of 1911, which by reference to date of a certain school election I am satisfied was in the month of September of said year, the said Parker came to me, and informen me that he had quit working for the company and that he wanted me to get his position back, and wanted me to intersede with George Rourke, the foreman of the East Side Mill, who lived neighbor to me, to help him to get his job back; I informed him that George was a fair minded man, and he would do just as well by going to him, himself;

I was also present at a school meeting of the Bunker Hill School District at about this time, at which Parker was present, and at which I heard him state to some one or to several people that he had quit his job at the East Side Mill;

That after he had quit, said Parker told me, in talking of it, that if the Company did not hire him back he would make it hot for them as they had been running cars that were not equipped in accordance with the requirements of the statute, and he would see that they suffered for it;

But said Parker never at any time claimed or mentioned to me that he had a contract or agreement with the Company whereby they had agreed to give him employment;

That in company with George Rourke and F. H. Dresser, and a chauffer, we left Marshfield, Oregon, at one o'clock June 17th by automobile, for Roseburg, in order to catch a train for Portland, so that

I might be present and testify in the foregoing entitled action on behalf of the defendant on the morning of the 18th;

That under ordinary conditions we would have readily reached Roseburg in ample time to have taken the evening train for Portland, but that we became stalled in what is known as the Canyon on said road, and it required eight hours for us to traverse four miles of said road, and although we worked hard and continuously, we did not reach Roseburg until about four o'clock on the morning of the 18th;

That we immediately started by automobile for Portland, but the machine became incapacitated, and we were compelled to take a train at Drain, and reached Portland at 4:35 in the afternoon of said day, and after said case had been closed.

BERNT MATHISON.

Subscribed and sworn to before me this the 6th day of July, 1914.

EVELYN JOHNSON,
Notary Public for Oregon.

[Seal]

AFFIDAVIT OF GEORGE ROURKE.

State of Oregon,
County of Coos,—ss.

I, George Rourke, being first duly sworn on oath, depose and say that I am a resident of Coos County, Oregon, that at all times in this affidavit mentioned

I was a foreman of the plant known as the East Side Mill, of the C. A. Smith Lumber & Manufacturing Company;

That during the month of September, 1911, John A. Parker, the plaintiff in the foregoing entitled action was employed as trimmerman in said mill, and came to me and demanded that his wages be increased;

He further said he would quit his job unless he received this advance, and I then told him I did not think he could get it;

That he informed me that he would quit the following Saturday night unless his pay was advanced, and on Saturday night he did so quit;

That I placed a man in his place, and turned in Parker's time to the time keeper as having quit;

That on the second Sunday after he so quit, i. e., eight days after the Saturday on which he stopped work, said Parker came to me and asked me to take him back to work at the same old wages, and I consented to take him back;

That said Parker never at any time claimed or intimated that he had any agreement or contract with the company whereby he was to be given steady employment by them;

That in company with George Rourke and F. H. Dresser, and a chauffer we left Marshfield, Oregon, at one o'clock, June 17th, by automobile, for Roseburg, in order to catch a train for Portland, so that I might be present and testify in the foregoing entitled action on behalf of the defendant on the morning of the 18th;

That under ordinary conditions we would have readily reached Roseburg in ample time to have taken the evening train for Portland, but that we became stalled in what is known as the Canyon on said road, and it required eight hours for us to traverse four miles of said road, and although we worked hard and continuously we did not reach Roseburg until four o'clock on the morning of the 18th; That we immediately started by automobile for Portland, but the machine became incapacitated, and we were compelled to take a train at Drain and reached Portland at 4:35 in the afternoon of said day, and after said case had been closed.

GEO. ROURKE.

Subscribed and sworn to before me this the 6th day of July, 1914.

HERBERT S. MURPHY.

Notary Public for Oregon.

[Seal]

AFFIDAVIT OF F. H. DRESSER.

State of Oregon,
County of Coos,—ss.

I, F. H. Dresser, being first duly sworn on oath depose and say that I am a resident of Coos County, Oregon, and am now, and at all times in this affidavit mentioned have been foreman at the West Side or large mill of the C. A. Smith Lumber & Manufacturing Company, situated in Marshfield, Oregon; that at all times in this affidavit mentioned I have

been acquainted with John A. Parker, the plaintiff in the foregoing entitled action;

That some time in the fall of 1911, the exact date I am unable to remember, but from other circumstances, believe it to have been in the month of September, 1911, the said John A. Parker, came to me and asked me to give him a job in the mill of which I was foreman, and he then and there stated to me that he had "bunched it on the other side", meaning that he had quit at the aforesaid mill of said company, saying that they would not pay him what he thought the job was worth, and he had quit;

That on the 17th day of June, 1914, together with Bernt Mathison and George Rourke, we started from the City of Marshfield, with an automobile and a chauffeur, at one o'clock P. M. in ample time to have reached Roseburg, and to have caught the 11:15 P. M. train for the City of Portland, which would have brought us to the City of Portland, early in the morning of the 18th of June; that said automobile was stalled in what is known as the Canyon on said road to Roseburg; that we procured horses and hurried as rapidly as possible, and traveled continuously all of said night, and did not reach Roseburg until 4:30 the next morning; that we then immediately started for Portland by automobile, but that the same broke down, and we were compelled to stop at Drain, and go from there to Portland by train, reaching there in the afternoon at 4:35 of said day.

F. H. DRESSER.

Subscribed and sworn to before me this the 6th day of July, 1914.

HERBERT S. MURPHY
Notary Public for Oregon.

[Seal]

State of Oregon,
County of Coos,—ss.

I, Herbert S. Murphy, being first duly sworn, on oath depose and say that I am a white male citizen of the United States, and of the state of Oregon and am over 21 years of age, and that I served the within and foregoing motion and affidavits upon William T. Stoll, one of the plaintiff's attorneys on the 6th day of July, 1914, at Marshfield, Coos County, Oregon, by then and there handing to and leaving with said William T. Stoll, personally and in person, a true copy thereof, and of the whole thereof, certified to be such by John D. Goss, the attorney for the defendant therein.

HERBERT S. MURPHY.

Subscribed and sworn to before me this 6th day of July, A. D. 1914.

JOHN D. GOSS,
Notary Public for Oregon.

Copy received July 6th, 1914, 6 o'clock and two minutes.

WM. T. STOLL,
Atty. for Pltff.

Filed July 8, 1914. A. M. Cannon, Clerk.

And to wit, on the 16th day of July, 1914, there was duly filed in said Court an Affidavit of Wm. T. Stoll, in words and figures as follows, to wit:

Affidavit of Wm. T. Stoll.

In the United States District Court for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Defendant.

State of Oregon,
County of Coos,—ss.

I, Wm. T. Stoll, being duly sworn on my oath say; I am one of the plaintiff's attorneys in this case and have had the management of this cause at all times; I have read the affidavit, i. e., a copy of the affidavit, of John D. Goss, Esquire, sworn to and subscribed the 6th day of July, 1914, before Evelyn Johnson, Notary Public, and served upon me at Marshfield, July 6th, at two minutes after six o'clock, P. M.

In paragraph two of that affidavit he states:

"I was informed by him some weeks previous to the trial thereof that inasmuch as he and myself

were interested as attorneys for the parties in several of the cases to be tried immediately succeeding this cause and in the same court, that he was willing and the plaintiff would be willing that the said cases be taken up in whatever order would best suit the convenience of the defendant.”

That statement is untrue. The facts with reference thereto are:—Mr. Goss met me on the streets of Mardhfield and stated to me that he had notice of setting of this case for the seventeenth of June, the Martilla case for the eighteenth of June and the Aho case for the nineteenth of June and that he had a case set in the Supreme Court at Salem for the seventeenth of June and he didn't see how he was going to be able to be in both places at the same time. In reply to that I stated that for **his accomodation** I would be willing to let the Martilla case change places on the calender with the Parker case (this case). He said in reply that he was attorney also in the Martjlla case and in the Aho case and that he would not allow any of those cases to proceed to trial without his presence so that he didn't see that that would help him any, and with that the subject was dropped. Not a word was said by me to the effect that I was willing or the plaintiff was willing that the causes mentioned might be taken up in whatever order would best suit the convenience of the defendant. Nothing was said and no thought entertained by me toward accomodating the defendant. I was disposed to accomodate Mr. Goss but was unable to do so as he declined my overtures in that direction.

I do not know the date of that conversation but it was some time prior to the trial.

I did not see Mr. Goss again until the afternoon of the 16th of June when I met him on the streets of Portland. Not a word was said by either of us at that time with reference to the cases. In the conversation, I told him I was stopping at the Multnomah Hotel. I spent the evening, the night and the morning until nine o'clock, at the hotel, either in the lobby or in my room. Mr. Goss did not call me up either at the hotel or elsewhere on the morning of the 17th of June or at any other time and request that the trial of this cause be postponed until after the trial of the Martilla case as stated in his affidavit. He never mentioned such a matter to me at any time or place in Portland.

I met Mr. Goss on the morning of the seventeenth in the Court Room about nine-thirty (the day on which this case was called for trial) but still he did not even mention the subject of postponing the trial of this cause till after the trial of the Martilla case, nor did he say one word to me then or ever about the absence of witnesses. Whether he made such a request of my associate, Mr. Smith, or not, I do not know. I understand from Mr. Smith, my associate, and Mr. Goss that the acquaintance between them is slight and of comparatively short duration, while the acquaintance between myself and Mr. Goss has extended over two years and has been, as far as I know, friendly if not intimate, and there is no reason why he should not have made the request of me

had he so desired to change the order of trial of this case with the Martilla case, particularly so as he claims to have had an understanding with me, and particularly so as he knew that I had the management of this case, and further I say not.

WM. T. STOLL,

Subscribed and sworn to before me this 7th day of July, 1914.

W. U. DOUGLAS,

[Seal]

Notary Public for Oregon.

Copy of the within affidavit received this July 7th, 1914, at Marshfield, Oregon.

JOHN D. GOSS,

Attorney for Defendant.

Filed July 16, 1914. A. M. Cannon, Clerk.

And afterwards, to-wit, on the 13th day of July, 1914 there was duly filed in said Court, an Affidavit of John D. Goss, in words and figures as follows, to wit:

Affidavit of John D. Goss.

In the United States District Court for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation.

State of Oregon,
County of Coos,—ss.

I, John D. Goss, being first duly sworn, on oath, depose and say that I have read the affidavit of William T. Stoll, made on the 7th day of July, 1914, and in reply thereto depose and say that on the 23rd day of April, 1914, I received through the United States mails a letter from Isham N. Smith, the attorney associated with William T. Stoll as attorneys for the plaintiff, a copy of which is hereto attached, marked [Exhibit A] and hereby made a part hereof;

That soon thereafter I discussed the matter with Mr. Stoll, and informed him that it might serve my convenience to change the order of trial of the said last three cases mentioned in said letter in all of which he appeared as attorney for the plaintiff, and I appeared as one of the attorneys for the defendant, and he stated that it would be perfectly satisfactory to the plaintiffs to take up the trial of said causes in any order that suited my convenience, and I then told him that I would look the matter up and determine what was best to be done; that some several days before the trial of the above entitled cause, I called upon Mr. Isham N. Smith, at his office in Portland, and he then informed me that so far as he was concerned any arrangements of the cases would be satisfactory that I thereupon wired Mr. Arno Mereen, the Superintendent of the C. A. Smith Lumber & Manufacturing Company, and one of the main witnesses for the said defendant in the trial of the Parker case, that the case could be tried on any of the dates

from the 17th to the 19th, that it probably would not be safe to rely upon waiting until later than the 20th;

That I did not see Mr. Stoll on the 16th of June in the city of Portland, or elsewhere, and had no conversation with him whatever; that I left the City of Portland for the city of Salem early in the morning of the 15th of June, and remained in the City of Salem until the evening of the 16th of June, arriving in Portland at approximately 8:45 P. M. of said date that I spent the evening in looking up the witnesses for the parties represented by me in said several cases, and that on the morning of the 17th I called up the office of Mr. Isham N. Smith on the telephone and requested that the Marttila case be tried before the Parker case, as there was danger of my witnesses not arriving; that a person purporting to be Mr. Isham N. Smith answered me on the telephone, and said Mr. Stoll was there, and after a brief consultation with some one, he replied to me that they could not postpone the case on account of the absence of one of their witnesses, or something to that effect, and that they would require that the Parker case proceed to trial that day;

That I thereupon immediately telegraphed and telephoned to Marshfield to procure the attendance of the witnesses who had not started, with the result set forth in my former affidavit herein.

JOHN D. GOSS.

Subscribed and sworn to before me this the 10th day of July, 1914.

[Seal]

HERBERT S. MURPHY,
Notary Public for Oregon.

[Exhibit A.]
To Affivavit of John D. Goss.
April 21, 1914.

Hon. John D. Goss,
Marshfield, Ore.

Dear sir:

In the several cases which you have against Mr. Stoll, together with some other cases which I have, the Court on yesterday set them in the following order for the following dates:

1. Stipel vs Gustafson, June 11, 1914
2. Conley vs S. P. Co., June 12, 1914
3. O'Hara vs Lewis A. Hicks Co., follows Conley case
4. Parker vs C. A. Smith Lbr. Co. June 17, 1914.
5. Marttila vs Coos Bay Pulp & Paper Co., June 18, 1914

You will observe that the three first names (sic) cases which I have are ones in which neither you or Mr. Stoll have any interest. I have given you the dates of them, however, so that you and Mr. Stoll may confer concerning the several cases which you respectively have against each other and so you may arrange the cases in any of the dates above

specified to suit the convenience of yourselves.

I wrote Mr. Stoll concerning these dates on yesterday and I would ask you to take the matter of the order of the trials as well as the respective dates, up with Mr. Stoll.

With best wishes, I am,

Yours truly,

(Signed) ISHAM N. SMITH.

H.

Recd. a copy July 10th, 1914.

W. T. STOLL.

Filed July 13, 1914. A. M. Cannon, Cl rk.

And afterwards, to wit, on the 16th day of July, 1914, there was duly filed in said Court, an Affidavit of William T. Stoll, in words and figures as follows, to wit:

Affidavit of William T. Stoll.

In the United States District Court for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Defendant.

State of Oregon,
County of Coos,

I, Wm. T. Stoll, being duly sworn upon my oath say, I have read the affidavit of John D. Goss, sworn to the 10th of July and entitled,

“Affidavit of John D. Goss, Replying to Affidavit of Wm. T. Stoll.” copy of which was served on me yesterday (Tenth of July).

In his affidavit, among other things he states,

“He (affiant) stated that it would be perfectly satisfactory to the plaintiff to take up the trial of said causes in any order that would suit my convenience.”

I deny that I made that statement to Mr. Goss or that I made any other statement to him on the subject mentioned except as contained in my former affidavit filed herein.

I note also that he now says that he had a conversation on the 'phone with Mr. Smith, my associate, or someone representing himself as Mr. Smith, in which he requested of him that this case change places with the Martilla case, on the calender, and that in the conversation Mr. Smith turned to someone in his office whom he understood to be the affiant and inquired of him (me) if that would be satisfactory, or that in substance. I have no knowledge of that. I was not in Mr. Smith's office the morning referred to. Mr. Smith did not turn to me from the 'phone and make such an inquiry; I did not know that he had a conversation with Mr. Goss on the subject, and further I say not.

Wm. T. STOLL.

me on the 6th of July, in the above entitled case I have thought over the matter, and refreshed my memory concerning my actions in the endeavors made by me to learn of witnesses and procure evidence on behalf of the defendant in said case; that before the trial of said case, I inquired of numerous men whose names I can not remember as to whether or not they knew anything concerning the case; and particularly of Fred Sandberg, trimmerman in the mill, Ray Chapin, assistant sawyer in said mill, an acquaintance of the plaintiff, and who lived in plaintiff's house, J. D. McDougal, a carpenter who worked in the Eastside Mill, and lived next door to plaintiff, Frank Eckley machinist who worked in and around said Eastside Mill, of Charley Olson, the saw filer who looked after the saws upon the trimmer upon which said Parker worked, and of August Isaacson, the head filer in the mill, who directed the work in connection with the saws upon the trimmer, without learning of any of the witnesses discovered since the trial, or that they knew anything about the case; that of the new witnesses since discovered, only two are in the employ of the company, to-wit: Charles Dennison, and William Hyden; that I enquired of said Dennison in a general way, but not knowing that he knew anything about the case, and he stating at that time that he knew nothing about the case, I did not discover that he knew or could testify to the facts set forth in his affidavit.

That I enquired of the foreman of said Eastside Mill, Mr. George Rourke, as to who would be apt

to know anything about the case, and he referred me to John Olson and John Cottor, but neither of them knew anything concerning the same; and he also referred me to John Coates, but I was unable to find said Coates, or to learn his address, and have just recently learned that he is in Hoquiam, Washington, but have been unable to get in touch with him

A. L. BUTZ.

Subscribed and sworn to before me this the 17th day of July, 1914.

[Seal]

EVELYN JOHNSON,
Notary Public for Oregon.

State of Oregon,
County of Coos,—ss.

I, John C. Kendall, one of the attorneys for the defendant in the foregoing entitled action hereby certify that I served the foregoing affidavit upon Wm. T. Stoll, one of the attorneys for the defendant therein on the 17th day of July, A. D. 1914, at Marshfield, Coos County, Oregon, by then and there handing to and leaving with the said W. T. Stoll, a copy thereof, duly certified by me to be a correct copy thereof.

JOHN C. KENDALL,
One of Attorney for Defendant.

Filed July 20, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on the 27th day of July, 1914, there was duly filed in said Court, an Affidavit of Isham N. Smith, in words and figures as follows, to wit:

Affidavit of Isham N. Smith.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant,

State of Oregon,
County of Multnomah,—ss.

I, Isham N. Smith, being first duly sworn, say:

That I have read the affidavit of John D. Goss in support of his application for a new trial in the above cause.

That in this case, as well as in several other cases wherein I have been associated with William T. Stoll, I have on every occasion wherein the question arose, notified and told Mr. Goss, the attorney for the defendant that the management of these cases was and is in Mr. Stoll; that whatever arrangement he could make with Mr. Stoll as to the trial was agreeable to me.

Heretofore, at the request of Mr. Stoll, and on April 20th, 1914, I appeared in the above court

and cause, among other causes, and procured the same to be set. The minutes of such action relating to this case are in Law Journal 23, page 362, as follows:

“43rd day, March Term, Monday, April 20, 1914.

“B.j.

“John A. Parker vs. C.A. Smith Lumber & Manufacturing Company. No. 6240. April 20th, 1914.

“Now at this day come the plaintiff, by Mr. Isham N. Smith, of counsel, whereupon on motion of said plaintiff it is ordered that this case be and the same hereby is set for trial on Wednesday, June 17th, 1914.”

Thereupon I wrote and mailed by regular United States mail to William T. Stoll, at Marshfield, Oregon, the following letter:

“Portland, Oregon,
April 20-14.

“Hon. Wm. T. Stoll,
Marshfield, Oregon.

“My Dear Stoll:

In Re-setting Cases.

“The following cases in which I am interested were set today by the United States Court, in the following order, and which was the earliest time I could get.

1. Stipel vs. Gustafson, June 11, 1914.
2. Conley vs. S.P.Co., June 12, 1914.
3. O’Harra vs. Lewis A. Hicks Co. follows the Conley case.
4. Parker vs. C.A. Smith Lumber Co., June 17 1914

5. *Marttila v. Coos Bay Pulp & Paper Co*, June 18, 1914.

6. *Aho vs. Willett & Burr*, June 19, 1914.

The Manika case was not set.

Now from the dates above given you can see that I have monopolized the time from about the 11th to the 20th of June. If you wish your three cases to come first, or if you wish them set in different order, you will please let me know and I will switch my other cases to suit you, as the other cases are by local counsel and they will agree, I am satisfied.

“On the 28th of this month the Breakwater goes to a five day schedule, and if you will check from the 28th you will find that this will give us one day or so within which to marshal our testimony in the given cases and we will certainly need this much time. The Breakwater should arrive here Monday the 15th, and this will give us Tuesday the 16th and we will start into the fight Wednesday the 17th.

“Yours truly.”

Thereafter I wrote and mailed the following letter to Honorable John D. Goss, Marshfield, Oregon, to-wit:

“Portland, Oregon,
April 21st, 1914.

“Hon. John D Goss,
Marshfield,
Oregon.

“Dear Sir:

In the several cases which you have against Mr. Stoll together with some other cases which I have,

the court on yesterday set them in the following order for the following dates:

1. Stipel vs. Gustafson, June 11, 1914.
2. Conley vs. S. P. Co., June 12, 1914.
3. O'Harra vs. Lewis A. Hicks Co., follows Conley case.
4. Parker vs. C.A. Smith Lumber Co., June 17, 1914.
5. Marttila vs. Coos Bay Pulp & Paper Co., June 18, 1914.
6. Ahi vs. Willett & Burr, June 19, 1914.

“You will observe that the three first named cases which I have are ones in which neither you or Mr. Stol have any interest. I have given you the dates of them, however, so that you and Mr. Stoll may confer concerning the several cases which you respectively have against each other and so you may arrange the cases in any of the dates above specified to suit the convenience of yourselves.

I wrote Mr. Stoll concerning these dates on yesterday and I would ask you to take the matter of the order of the trials as well as the respective dates up with Mr. Stoll and let me know if present arrangement is satisfactory.

“With best wishes, I am, Yours truly.”

Thereafter and in due course I received from William T. Stoll a letter under date of April 22nd, 1914, reading as follows:

“I. S. Smith, Esq.,
Corbett Bldg.,
Portland, Oregon.

“My Dear Ite:

Re-setting Cases.

“Your setting of the cases is all right. We will let her go just as she stands. Yours very truly,
W. T. Stoll.”

Thereafter in due course I received from Honorable John D. Goss the following letter, dated Marshfield, Oregon, April 24, 1914, to-wit:

“Littlefield & Smith,
Portland, Oregon.

Re Aho and Parker cases.

“Gentlemen:

Your letter of April 21st, giving us the dates of the various cases in which we are both interested in Portland, is at hand, and so far as present indications show these dates of trial will be very satisfactory.

“I have spoken to Mr. Stoll regarding the same, and he also appears to be satisfied, so that you merit the thanks of both of us for whatever you have done to bring about this result.

“I take it that any arrangement or stipulation I may make with Mr. Stoll will be entirely satisfactory to you with regard to any of these cases.

“Again thanking you for your continued courtesy in this and other matters, I remain, Very truly yours,
John D. Goss.” “G:J”

I did not thereafter at any time whatsoever, or at all, agree with Mr. Goss or anyone for him, to change the date of these trials.

Sometime in the month of June, and several days prior to the trial, the exact time I do not remember, I met Mr. Goss and incidentally the question of the order of trials came up. At that time I reiterated to him that the order of trials was entirely between him and Mr. Stoll. He did not at that time request any change in the schedule, nor claim that he could not be ready in the cases as they were set.

Thereafter and on June 17th, 1914, the case of John A. Parker vs. C. A. Smith Lumber & Manufacturing Co. was called for trial in the above court, and prior to proceeding with the trial his Honor, Judge Bean, called the title and asked if the plaintiff was ready for trial, whereupon the attorneys for plaintiff, to-wit, myself and Mr. Stoll being present in court notified the court we were ready. Thereupon the Court asked if the defendant was ready for trial, whereupon the defendant, represented by Mr. Goss, who was then in court, stated the defendant was ready.

At the time the case was called for trial there was no request for postponement. On the contrary, the defendant announced that it was ready for trial.

The journal entry of the commencement of said trial is as follows:

“Law Journal No. 24, page 21. 93rd day March Term, June 17, 1914. B. & W.

John A. Parker vs. C. A. Smith Lumber & Manufacturing Company. No. 6240. June 17, 1914.

“Now at this day come the plaintiff, by Mr. I. N. Smith and Mr. William T. Stoll, of counsel, and the defendant by Mr. John D. Goss, of counsel, and this being the day set for the trial of this cause, now come the following named jurors to try the issues joined, viz., W. R. Winans, A. C. Libby, E. J. Roth, A. H. Averill, O. B. Molmsten, W. J. Wiley, Ed. Weaver, C. L. Hattenburg, Jasper N. Bellinger, J. S. Dunnivan, P. J. Conn and Fingal Hinds, twelve good and lawful men of the district, who being accepted by both parties, who being duly empaneled and sworn, proceed to hear the evidence adduced and the hour of adjournment having arrived it is ordered that the further trial of this case be continued until tomorrow, June 18th, 1914, at ten o'clock A. M.”

Affiant further says that on the first day of said trial the jury was selected, the opening statements of respective counsel were made, the plaintiff presented his evidence and closed his case, and three witnesses for the defendant, to-wit, A. Mareen, A. L. Butts and F. Kester were called, sworn and testified for the defendant.

On the 17th day of June, in adjourning for the noon hour the Court adjourned for 1:30 P. M. in order to expedite the trial of the above cause. I remember the occasion, because I misunderstood the hour of adjournment and caused ten minutes delay.

On the opening of Court on June 18th counsel for the defendant, Honorable John D. Goss, at the opening of Court, had some colloquy with the Court relative to the non-arrival of some of his witnesses, but the

stenographic record shows the following statements to have been made by him at that time:

“Portland, Oregon, Thursday, June 18th, 1914,
10 A. M.

“Mr. GOSS: I have to say that four of our witnesses, something has happened to them, I don't know what. They didn't get into Roseburg in time to catch the train and didn't get in in time to catch the night train. I have a telegram from Roseburg that they got in at four o'clock. It embarrasses me to have to ask for any leniency in this case.

THE COURT: I don't know, Mr. Goss. It seems to me you will have to proceed with the trial of the case. I don't see how we can postpone it until that time. It will take them all day to get down here, if they started in an automobile.

Mr. GOSS: My advices are they should be here for the afternoon session, if they left there by four o'clock in the morning and the roads are fairly good.”

Thereupon the trial proceeded. The defense called Dr. E. Menzies, who testified on behalf of the defendant, and thereupon the defendant rested, and thereafter the rebuttal testimony of plaintiff was introduced and the rebuttal witnesses used were John A. Parker and John F. Bane, and thereupon the defendant called A. Mereen in sur-rebuttal, also A. L. Butts in sur-rebuttal, also F. Kster in sur-rebuttal; and thereafter the case was argued to the jury and thereafter the jury was instructed and retired for their consideration.

Before the closing of the case and after F. Kester, the last witness in sur-rebuttal called by the defendant, had testified again, the defendant, through Mr. Goss, made the following statement, which appears in the stenographer's record:

"Mr. Goss: May it please the Court, I wish it to appear in the record on this application for delay that the witnesses I am waiting for are Mr. Dresser, Mr. Mathewson and Mr. Roarke, and I presume it is possible at this time to make a motion for a directed verdict in this case."

"The Court: Very well. You can have the record show that. I think there is testimony enough to go to the jury."

Affiant further states that at no time did the said John D. Goss claim or intimate that he was unable, by any fault of the plaintiff or his attorneys, or because he relied upon any purported agreement with anybody representing plaintiff, that his witnesses were delayed or would not arrive, nor did he claim at the trial at any time, nor in his application for continuance until his witness could arrive, that the plaintiff had misled him in any manner.

On the other hand, affiant states that the said John D. Goss knew from April 24th, 1914, that the case above entitled was set for June 17th, and had ratified it, and at no time did the said John D. Goss ever ask me to change the date. He had been informed in my letter that the matter of the date was between him and Mr. Stoll, and that the said John D. Goss was in Portland, Oregon, sometime prior

to the actual trial of the above case, and after the fourth day of June, the exact date affiant does not remember, at which time affiant met Mr. Goss and casual reference was made to the trail of these cases, and I then told him that I would be ready to try them in the order in which they were set unless changed by him and Mr. Stoll.

At no time did William T. Stoll, with my knowledge, ever agree to any change in the arrangements, but, on the contrary, the said William T. Stoll and the said John D. Goss both admitted they were satisfied with the dates in the letters above referred to.

Affiant further says that the failure of the said witnesses to arrive in time for the trial was not due to any fault, neglect, stipulation, misrepresentation or artifice on the part of the plaintiff or his attorneys in any manner or way whatsoever or at all.

Affiant refers to the affidavits on behalf of the defendant in support for its motion for a new trial, as follows:

Affidavit of John D. Goss, page 1: "That I notified the witnesses in the several cases to be tried in the above entitled court to be present in Portland on the 17th of June. That I was occupied in the trial of a case in the Supreme Court of the State of Oregon until late in the afternoon of the 16th day of June; that on returning to Portland I discovered that all the witnesses required in the above entitled case had not appeared, and that early on the morning of June 17th I called up the attorneys for the plaintiff and requested that the trial of the above entitled

case be postponed until after the trial of the next succeeding cause, i. e. the case of Marttila vs. Coos Bay Pulp & Paper Company, in which they appeared as attorneys for the plaintiff and I appeared as attorney for the defendant, but they then informed me that they would not consent to a change at that time. That I immediately, or as soon thereafter as possible, got into communication with the defendant company in the above entitled cause and had the remaining witnesses, of whom I had any knowledge at that time, to-wit, F. H. Dresser, Burnt Mathewson and George Roarke, at once to start in an automobile for the railroad at Roseburg; that their delay in coming was occasioned by the understanding of the defendant that this trial should be postponed to the trial of the other cause, and to the fact that I was not present at Marshfield at the time, and the further fact that communication with Marshfield is very difficult, uncertain and hard to understand and that telegraphic communication is somewhat slow and uncertain."

From the affidavit of Burnt Mathewson I quote the following:

That in company with George Roarke and F. H. Dresser and the chauffeur we left Marshfield, Oregon, at one o'clock June 17th, by automobile, for Roseburg, in order to catch a train for Portland so that I might be present and testify in the foregoing entitled action on behalf of the defendant on the morning of the 18th;

“That under ordinary conditions we would have readily reached Roseburg in ample time to have taken the evening train for Portland, but that we became stalled in what is known as the Canyon on said road and it required eight hours for us to travel four miles of said road, and although we worked hard and continuously we did not reach Roseburg until about four o’clock in the morning of the 18th,” etc.

I further quote from the affidavit of George Roarke in support of the defendant’s motion for a new trial, as follows:

“That in company with George Roarke and F. H. Dresser and the chauffeur we left Marshfield, Oregon, at one o’clock June 17th by automobile for Roseburg in order to catch a train for Portland so that I might be present and testify in the foregoing entitled action on behalf of the defendant, on the morning of the 18th.”

“That under ordinary conditions we would have readily reached Roseburg in ample time to have taken the evening train for Portland, but that we became stalled in what is known as the Canyon on said road,” etc

I further quote from the affidavit of F. H. Dresser, filed by the defendant in support of said motion, to-wit: “That on the 17th day of June, 1914, together with Burnt Mathewson and George Roarke we started from the city of Marshfield with an automobile and the chauffeur at one o’clock P. M., in ample time to have reached Roseburg and to have

caught the 11:15 P. M. train for the City of Portland, which would have brought us to the City of Portland early in the morning of the 18th of June; that said automobile was stalled in what is known as the Canyon on said road to Roseburg," etc.

Affiant further says that he is informed by said affidavits and believes and charges and states the truth to be, that the failure of the witnesses to arrive at the above trial was because their automobile broke down and not because the defendant was misled by any act of the plaintiff.

Affiant further says that the defendant had ample time, to-wit, from April 24th, 1914, to have prepared for the above trial, and that in the affidavit of the attorney for the defendant, to-wit, the affidavit of John D. Goss, he states,

"That I notified the witnesses in the several causes to be tried in the above entitled court to be present in Portland on the 17th of June."

Affiant says that the failure of the said witnesses to be present on the 17th was due to the inexcusable neglect of the defendant and its said witnesses, and that the failure of said witnesses to be present in said court was not attributable to any fault, statement, agreement, either express or implied, or other attitude of this plaintiff or his attorneys in any way whatsoever or at all.

From the affidavit of John D. Goss relative to the failure of the said witnesses I quote the following:

"That I did not know the plaintiff would deny the statements which these witnesses claimed he had made to them."

The same affidavit has previously recited as follows, to-wit:

“That I notified the witnesses in the several cases to be tried in the above entitled Court to be present in Portland on the 17th of June.”

And in the affidavits of Mathewson, Roarke and Dresser it appears that these men left Marshfield at one o'clock P. M. of June 17th, 1914.

That the cross-examination of John E. Parker began at the afternoon session of June 17th, 1914; that Court adjourned at noon to meet at 1:30 P. M.; that the actual cross examination did not begin until 1:40 P.M. as by my misunderstanding of the hour of meeting neither Mr. Parker, nor Mr. Stoll, nor his witnesses arrived until about 1:40; that Mr. Parker was not asked relative to statements purported to have been made to the witnesses Mathewson, Fred Moore, Dresser or Roarke until the morning of June 18th, 1914, on cross-examination of John A. Parker in rebuttal, as appears at pages 104 and 105 of the transcript.

Answering the reply affidavit of John D. Goss I state that sometime several days and long prior to the trial of the above cause, and between the 4th and the 17th of June, I had a talk with John D. Goss wherein I informed him that as far as I was concerned any arrangement of the cases which he and Mr. Stoll might make would be satisfactory; that I had nothing to do with the arrangement of the cases definitely; that that matter was between him and Mr. Stoll.

The purport of the conversation was as above stated. I did not at any time represent to him or state to him, or lead him to believe, that I had any control over the changing of the cases.

John D. Goss did not call me up at my office over the telephone on the 17th day of June in the morning relative to these cases. He called me by phone on the 16th of June and wanted to know how the cases would be tried, and I told him then that the Parker case would be tried first, and the cases would be tried as they were set. He did not at that time request that the order of trials be changed. He did not at any time request of me that the Marttila case be tried before the Parker case.

The purport of my telephonic conversation with Mr. Goss was as above stated. At no time did he ever claim to be misled, deceived or taken at an unfair or undue advantage, and the affidavit of his witnesses shows that they left Marshfield in plenty of time to be in Portland in time for the Parker case.

As to the purported telephonic conversation of June 17th, 1914, before this case was called John D. Goss did not call me on that morning. He talked with me some as to the order of the cases. I did not at any time tell William T. Stoll that John D. Goss had demanded that the Marttila case should be tried before the Manika case. I spoke to Mr. Stoll about the order in which the cases would be tried, and he stated, "In the order they were set," and that is what I informed Mr. Goss over the phone. Mr. Goss did not demand that the cases should be changed in their place. He asked me which case

would come up first, and I told him, after referring to Mr. Stoll, the Parker case.

If John D. Goss had ever requested me to change the date of the trial he would have received the same information which my letter of April 21st, above set out, contained, to-wit, that the order of the trial was between him and Mr. Stoll.

Affiant therefore says that there was no accident or surprise in the fact that this case was tried on the day it was set, to-wit, June 17th, for the reasons above stated and for the reason that the trial had been set for such date for approximately two months before it was had.

And further affiant saith not.

ISHAM N. SMITH,

Subscribed and sworn to before me this July 27th, 1914.

[Seal]

E. V. LITTLEFIELD,
Notary Public for Oregon.

Filed July 27, 1914. A. M. Cannon, Clerk.

And afterwards, to wit, on Monday, the 3rd day of August, 1914, the same being the 25th Judicial day of the regular July, 1914, Term of said Court; Present: the Honorable ROBERT S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

Order Denying Motion for New Trial.

In the District Court of the United States for the District of Oregon.

No. 6240.

August 3, 1914.

JOHN A. PARKER,

v.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY.

This cause was submitted to the Court upon the motion of the defendant for a new trial herein, and was argued by Mr. I. N. Smith, of counsel for the plaintiff and by Mr. John D. Goss, of counsel for the defendant; on consideration whereof, it is Ordered and adjudged that said motion be, and the same is hereby denied.

And afterwards, to wit, on the 3rd day of September, 1914, there was duly filed in said Court, a Bill of Exceptions, in words and figures as follows, to wit:

Bill of Exceptions.

In the District Court of the United States for the District of Oregon.

JOHN A. PARKER,

Plaintiff.

vs.

C. A. SMITH LUMBER and MANUFACTURING
COMPANY, A Corporation,

Defendant.

BE IT REMEMBERED: That on the 17th day of June, 1914, the above entitled action came on for trial before the above court and a jury duly empanelled.

Honorable Robert S. Bean, District Judge, presiding.

Plaintiff appeared by W. T. Stoll, and I. N. Smith, his counsel; and the defendant appeared by John D. Goss, its counsel: and the following proceedings were had:

The plaintiff John A. Parker was then called as a witness in his own behalf, and testified that while he was in the employ of the defendant company he received an injury, and that subsequently he made settlement with said company through Mr. Mereen, the general superintendent, by the terms of which it was agreed that defendant should pay plaintiff a certain sum of money and give him employment (a job) in its mills as long as he wanted it.

On cross examination he testified that as a part of said settlement he signed a written document which was offered and received in evidence, marked [Defendant's Exhibit A], which said Defendant's Exhibit A was in the words and figures following:

“For the sole consideration of the sum of Four hundred ten and 75-100 Dollars, this 25th day of September, 1909, received from C. A. Smith Lumber & Mfg. Co. I do hereby acknowledge full satisfaction and discharge of all claims, accrued or to accrue, in respect of all injuries, or injurious results, direct or indirect, arising or to arise from an accident sus-

tained by me on or about the 16th day of December, 1908, while in the employment of the above.

\$410 75-100

[Signed]

J. A. PARKER [Seal]

Witness, ARNO MEREEN,

Address, Marshfield

Witness, DAVID NELSON

Address, Marshfield

John F. Bane was then called as a witness in behalf of the plaintiff, and after he had testified, the plaintiff rested his case.

The defendant thereupon moved for a nonsuit and a dismissal at that time on the ground that plaintiff had failed to make out a case, in that, in the first instance, he had failed to show that there was any liability or any valid claim in law, as between plaintiff and defendant company, upon which a settlement could be made, or as a basis of settlement; that is that the plaintiff had failed to show that he had any claim against the company whatever, and that the settlement, or promise, or agreement, or whatever it may be termed, was without consideration on the part of the company and was voluntary; and such motion for nonsuit was based upon the further ground that plaintiff had failed to show that there was any agreement, distinct from the written agreement itself, distinct from the voluntary promises whereby he was to be continuously employed; and such motion was based on the further ground that the plaintiff's own evidence showed that he voluntarily ceased employment, which act would terminate

any agreement that there might be: which motion the court then and there overruled, to which ruling the defendant excepted, which said exception was allowed.

A. Mereen, A. L. Butz, and F. Kester were then called and testified on behalf of the defendant.

The trial of said action was then adjourned until the following morning, to-wit, Thursday, June 18, 1914, at 9:30 A. M., and at said time the defendant notified the court that four of defendant's material witnesses, who were expected to testify at the trial, had been unavoidably delayed by an accident, and by reason thereof had failed to get into Roseburg in time for the afternoon train for Portland, and that they expected to arrive in Portland in time for the afternoon session, and for these reasons defendant requested a postponement of the trial until the afternoon of said June 18th, which motion the court thereupon overruled, to which ruling the defendant excepted, which exception was allowed.

Dr. E. Mingus was then called as a witness on behalf of the defendant, but his evidence was ruled out as incompetent and by reason of the absence of defendant's witnesses as aforesaid, and the court's refusal to grant a continuance until their arrival, defendant was compelled to, and did rest its case.

John A. Parker and John F. Bane were recalled in rebuttal on behalf of the plaintiff, and A. Mereen, A. L. Butz, and F. Kester, were recalled in surrebuttal on behalf of the defendant.

The defendant thereupon renewed its motion for a continuance until the arrival of three important and material witnesses on behalf of the defendant, nameley Dresser, Matthison, and Rourke, which motion was overruled, to which ruling of the court defendant thereupon excepted, and said exception was allowed.

Both sides then rested, and the defendant requested the court to instruct the jury to find a verdict in favor of the defendant, which instruction the court refused to give the jury, to which refusal and ruling defendant excepted, which said exception was allowed.

The defendant then requested the court to give the jury the following instructions:

“Before you may find a verdict for the plaintiff in this case, it is necessary that you find, gentlemen of the jury, that there was a contract between the plaintiff and the defendant, whereby the defendant agreed for a condiseration, to give the plaintiff employment, as long as the plaintiff desired it,” which instruction the court refused to give the jury, except as contained in the general charge, to which ruling the defendant excepted, which exception was allowed.

The defendant then requested the court to give the jury the following instructions:

“If you find that there was such a contract, you must also find that that contract was still in existence at the time when the defendant refused to employ the plaintiff”, which instruction the court refused to give the jury, except as contained in the

general charge to which ruling the defendant excepted, which exception was allowed.

The defendant then requested the court to give the jury the following instructions:

“In this connection, there has been evidence introduced going to show that the plaintiff, of his own accord, quit work for the defendant, and you are instructed that if you find from the preponderance of the evidence that the plaintiff, of his own accord, quit working for the defendant, whether it was for the purpose of procuring higher wages, or whatever his motive may have been, then such act on his part terminated any contract or liability on the part of the defendant to furnish the plaintiff with employment, and the discharge of the plaintiff by the defendant thereafter, or the refusal of the defendant thereafter to employ or continue to employ the plaintiff would not render the defendant liable in damages therefor. And if you find such to be the facts, your verdict should be for the defendants,” which instruction the court refused to give the jury, except as contained in the general charge, to which ruling the defendant excepted, which exception was allowed.

The defendant then requested the court to give the jury the following instruction:

“In determining whether or not a contract for employment such as the plaintiff claims herein existed you are to be governed by the final agreement that was actually made in settlement of the claims of the plaintiff, and although the plaintiff may have

been promised work by the defendant upon numerous prior occasions, such promises would be mere inducements, without consideration, and would not of themselves make a contract, nor would they by reason of having been repeatedly made during the negotiations, be for that reason alone a part of the contract of settlement," which instruction the court refused to give the jury, except as contained in the general charge, to which ruling the defendant excepted, which exception was allowed.

The defendant then requested the court to give the following instruction:

"The defendant under the pleadings herein, and under the facts as disclosed in the evidence, would not be responsible for the acts of the physician, Dr. Dix, nor for his failure to properly care for the injuries of the plaintiff, if he did so fail to care for the plaintiff, but under the relationship between the plaintiff and the defendant, it was incumbent on the defendant only to use proper care in the selection of a physician, and if they used reasonable care in selecting a physician, and the physician so selected was one of good reputation and ability, the defendant's full duty was performed, and the defendant could not be held responsible for any specific acts of negligence or mal-practice of which the physician might be guilty," which instruction the court refused to give, except as contained in the general charge, to which ruling the defendant excepted, which exception was allowed.

The defendant then requested the court to give the jury the following instructions:

“If you find from the proponderance of the evidence in this case, therefore, that the defendant had used due care in the selection of a physician, and that the claim of the plaintiff with regard to his injury was based upon the neglect or mal-paractice of the physician, then I instruct you that such a claim would not be a valid claim as against the defendant, and the settlement thereof could not be the basis of a contract or compromise between the plaintiff and the defendant, and any promise of the defendant with regard thereto made to the plaintiff would be without consideration and not binding in law, and the failure of the defendant to keep such promise, even though you find such failure, would not render the defendant liable in damages to the plaintiff herein,” which instruction the court refused to give the jury, except as contained in the general charge, to which ruling the defendant excepted, which exception was allowed.

The Court then gave the jury the following among other instructions:

“Now there is some evidence on behalf of the defendant tending to show that after the plaintiff had worked for the defendant for a certain time, he quit or ceased work in order to obtain higher wages, and that he made, or attempted to make arrangements with some other employes not to take his place, in order to force the company to increase his compensation. Now, if he did that, that would be a breach of his agreement, if there was one. The Company agreed, according to his statement to give him em-

ployment as long as he wanted it, and that obligated him to continue in the employment unless the cessation was due to some physical acts, I suppose, like illness or something of that kind, or by mutual consent. He might take a lay-off, if the company consented to it or it was agreeable to them, but he couldn't use that contract as a means of forcing or compelling the company to increase his wages. Whether he did that or not, is a question of fact, there is a dispute as to that, and that also is a question." To which instruction defendant excepted, which exception was allowed.

The jury then retired, and after a short absence returned into court a verdict in favor of the plaintiff for damages in the sum of Twenty-five Hundred Dollars (\$2500.00).

For the purposes of the propositions raised by the refusal of the court to grant defendant's motion for a non-suit, and the court's refusal to instruct the jury to bring in a verdict for the defendant, there is attached to this bill of exceptions, marked [Exhibit A], hereby referred to and made a part hereof, a transcript of all the evidence offered and received at the trial of said cause, and the instructions of the Court to the jury.

Thereafter, and after the verdict was rendered in favor of the plaintiff, and the judgment of the court was entered upon the verdict in favor of the plaintiff, the court by order duly entered, extended the time within which the defendant might submit a bill of exceptions to sixty days from the date of

said judgment, to-wit, until the 17th day of August, 1914, and subsequently, to-wit, on the 17th day of August, 1914, a further order was duly signed and entered by the court, extending the time within which the defendant might prepare, file, and serve its bill of exceptions, up to and including the 27th day of August, 1914.

AND NOW, IN furtherance of justice, and that right may be done, the defendant presents the foregoing as its bill of exceptions in this case, and prays that the same may be settled and allowed, and signed and certified by the judge as provided by law.

JOHN D. GOSS

Attorney for Defendant.

United States of America,
District of Oregon,—ss.

I, Robert S. Bean, Judge aforesaid, before whom the foregoing action was tried, hereby certify that the foregoing bill of exceptions is by me examined, allowed, and settled, this 3rd day of September A. D. 1914; and I further certify that Exhibit A attached to and made a part of this bill of exceptions contains all of the evidence offered and received during the trial of said action, and the instructions of the court to the jury.

R. S. BEAN

District Judge.

(Testimony of John A. Parker.)

Exhibit "A."

JOHN E. PARKER.

The plaintiff, being first duly sworn, testified in his own behalf, as follows:

DIRECT EXAMINATION.

Questions by Mr. Smith:

Q. Where do you live, Mr. Parker?

A. Florence, Oregon.

Q. You are the plaintiff here, are you?

A. Yes, sir.

Q. And what is your age, please?

A. About thirty-two.

Q. Prior to your injury what was the condition of your health and physical ability? A. Good.

Q. What is your condition of health and ability to run the trimmer now?

A. Good condition.

Q. Now, you were a mill-wright by occupation, were you? A. Yes.

Q. How many years apprenticeship did you serve?

A. Oh, I worked at the business about twelve or fourteen years, somewhere along there.

Q. How long?

A. Up to the time I got crippled, I say.

Q. How long did you work for the C. A. Smith Company this defendant, before you got hurt?

A. Somewhere round about six years.

Q. Down there at Marshfield? A. Tes.

(Testimony of John A. Parker.)

Q. What were you doing for them?

A. I worked on the construction of the mill from the start to the finish.

Q. Do you remember about the time you were hurt? A. Yes, sir.

Q. When was it please? A. 1908.

Q. And did you acquaint them with the fact that you were hurt? A. Yes, sir.

Q. Now, while you were working for them what sum if any did they deduct from your wages for this hospital fee, as they call it?

A. A dollar a month.

Q. After you were hurt what doctor did you report to for treatment?

A. Dr. Dix, George E. Dix.

Q. How did you come to go to him for treatment?

A. Why, you pay a dollar a month for his services.

Q. And what application if any did you suffer from during the treatment?

A. Lost the hand by his treatment.

Q. Well, state whether or not blood poisoning set in.

A. Yes, blood poisoning set in the hand.

Q. And do you know why your hand was cut off?

A. Caused by the blood poisoning.

Q. Seemed to settle there, did it? A. Yes, sir.

Q. Did you attribute that to the injury you received, as one of the results of it? A. Tes, sir.

Q. Did you let the C. A. Smith Company know that you claimed they were responsible for the loss of your hand?

(Testimony of John A. Parker.)

A. Yes, sir.

Q. And what if anything did they claim about it? Did they affirm or deny it?

A. Yes, sir, they affirmed it.

Q. Now, then did you have any settlement of your matter with them, arising out of this personal injury? A. Yes, sir.

Q. Now, I wish you would speak up distinctly; it is a little hard to hear in this room. Just talk up like you would on the work there, and tell us now all about that settlement, where it was, when it was, who were present, and what they agreed.

A. Well, after I got hurt in the mill, why I called Dix and he attended to me. He didn't come up the night I called him; he said he would come up the next morning, and he came up the next morning and dressed my leg, and he said it would either turn off to a boil or an abcess, where I got hurt would, and-oh it went on for a few days, and a king of tingling pain between my two fingers, and after I got so I could get down town, I met him on the street, and told him about this pain in my fingers, but he said nothing to it; he says "That is just rheumatism." I went home then. He gave me a bottle of some kind of fluid to rub in the outside of the hand.

Q. I think you have given the result of that. Your hand was amputated finally because of blood poisoning: A. Yes, sir.

Q. Now, the question I asked, just to get along with the matter, was for you to tell what conver-

(Testimony of John A. Parker.)

sation you had when you made this settlement, and who it was with and where it was.

A. Along in May I got so I could go to the office.

Q. What year was that please?

A. That was 1909.

Q. Go right ahead.

A. And I met, I think, Mr. Smith first.

Q. Who was Mr. Smith?

A. C. A. Smith, president of the company

Q. The company you worked for?

A. Yes. Yes, I met him down in the mill and shook hands with him; told him I got hurt; how it happened, something, and we we talked a little while and I don't think—I met him the next day then before I met Mr. Mareen; he talked to me, and he says "you talk with Mr. Mareen; anything he says goes" he says. "You make a settlement with him in regards*———"

Q. Mr. Smith told you that?

A. Yes, sir.

Q. Did you afterwards see Mareen?

A. I did.

Q. Where and when? Who was Mr. Mereen at that time What position did he hold.

A. Mr. Mareen was superintendent; genera; superintendent.

Q. Of the mill? A. Of the mill.

Q. Do you know what position he held in the corporation?

A. Well, he may have been vice-president; I don't know at that time or not.

(Testimony of John A. Parker.)

Q. But you do know he was superintendent of it?

A. Yes, sir.

Q. He was the same man Mr. Smith referred you to, was he? A. Yes, sir.

Q. Now, go on and tell your transaction with him.

A. He said he would like to have a settlement didn't want to have any trouble about it; said he did n't know as the company was to blame. Wanted to know what I would do, what I would take. I told him I didn't know what it would—what I would take, so—oh, we had several conversations and at last he says he would give me half-time; that was the best he could do, and he says "We will give you a job." Well, I says probably the company will break up, something like that and I wont have no job; well, he said "We will give you a job as long as the company holds together, or as long as you want it." That is just about the words he used.

Q. Did you make this settlement?

A. We made this settlement.

Q. Did you accept that?

A. No, I didn't accept it at that time, so I said I would think it over and see. I said "How about this doctor bill; I got another doctor on it" I says to him. Well, he says "We will pay the doctor bill." I also put up about the medicine I used, another drugstore; he said they would settle for that too; So, I went to work; I went to work in the meantime, if I remember right, and I worked a little over a month on the trimmer, helper; I was on the big trim-

(Testimony of John A. Parker.)

mer at that time; they had no air; they had no air at that time, so I went as a helper. I worked about a month or a little over and took an attack of appendicitis. I was laid up some little while. At that time I had no—I didn't have a settlement.

Q. That was before the settlement?

A. That was before the settlement; we had talked the thing up before that but we hadn't settled, so I didn't go to their doctor again. I went to another hospital and had an operation for appendicitis, and was laid up probably three months, something like that, and I came back and on my return they put me in as foreman taking machinery out of the Bay City Mill, and I filled the position until the mill was ready to work, that is run the yard, kind of straw-boss, and I went on as time-keeper, and I filled that position until they started up, started up the mill, then I went and filled the position as trimmer man there for about three years.

Q. Now, let's come back to the actual date of the settlement. You say that was after you had been operated on for appendicitis?

A. Yes, sir.

Q. Now, at the time of your settlement or after you came back, did you have any further conversation with Mareen?

A. Yes, sir.

Q. Talked this over with him again?

A. We talked this all over again.

Q. And do you remember the date that you signed this release that has been read?

(Testimony of John A. Parker.)

A. Sometime in September, I think. I don't remember the date.

Q. And what were the ultimate promises, what were the promises that were made to you for the settlement, if any?

A. Well, to give me this doctor bill, hospital bill, and \$200; and after we got through talking, I says to Mr. Mareen, I says: "Now to be conscientious and not to blame the company, who do you think is to blame for the loss of my hand? Don't you think Dix is" Well, he says: "I believe Dix is somewhat the cause of your losing your hand."

Q. And how many conversations did you have with him, if you remember, about the employment that he was to give you?

A. I had a number.

Q. What was the final settlement as to employment?

A. He partly promised me the position as foreman of the Bay City Mill when they started that up. When the time came there was another man put in the position. I told him that I thought I would be able to handle that job, but this fellow had a better pull than I had, so he got it and they put me in this trimmer job.

Q. And what statement if any did they make to you at the time this release was signed about giving you a job and what kind of a job?

A. Said would always give me a job and something better than common work.

(Testimony of John A. Parker.)

Q. That was part of the whole settlement?

A. Yes, sir.

Q. How long did you work for them?

A. Altogether?

Q. Yes. A. I worked about six or seven weeks.

Q. I mean after you got hurt; after you made this settlement how long did you work for them?

A. I worked for them until after my brother got killed, after I brought this trial. I forget now the date.

Q. How long did they tell you before the settlement you might have the job for?

A. As long as I wanted it.

Q. Now, after you started work there what different positions did you fill?

A. Well, first I went on as helper in the trimmer box; then I took appendicitis and came back and went on as foreman, then as time-keeper and from that to trimmer-man.

Court: Talking of working before or after the settlement?

A. After the settlement.

Court: You had appendicitis before the settlement.

A. Yes, before the settlement.

Court: He is asking what work you did after the date of settlement.

A. This was after the date of settlement, this work.

(Testimony of John A. Parker.)

Q. You filled various places there after that, did you?

A. Yes, sir.

Q. What wages did they pay you?

A. Excuse me a minute. I was helper on the trimmer before my operation for appendicitis.

Court: That was before the settlement?

A. That was before the settlement. We had talked the thing up before that.

Court: But you didn't have the settlement until after you came back from the——

A. Appendicitis.

Q. State whether you accepted that settlement on the understanding and promises he had made you as well as the other consideration?

A. Yes, sir. It was the understanding I was to keep employed.

Q. What work were you given after you went back after settlement? What different positions?

A. Well, I was foreman of the yards.

Q. What did you get at that service? A. \$3.00.

Q. And what other place did you fill?

A. Time-keeper.

Q. What did you get there? A. \$3.00

Q. What other place did you fill?

A. Trimmer.

Q. What did you get there? A. \$3.00

Q. What kind of trimming table did you work on there, a regular table, or not?

A. I worked both; first the levers, then got the air.

(Testimony of John A. Parker.)

Q. What did they do if anything with relation to changing the table or fixing it so you could work with one hand?

A. Mr. Mareen said he put that trimmer in there a-purpose so I could run it.

Q. Was it put there actually? A. Yes, sir.

Q. Your table is a little different than the others?

A. Practically the same; they have others like it now. It was different from the others then.

Q. The one you worked on then? A. Yes.

Q. Was the table at which you worked a table at which you could do the work they required?

A. Yes, sir.

Q. Do a full day's work? A. Yes, sir.

Q. When was it that you were discharged by the company?

A. I was discharged when I came back from the trial of my brother.

Q. Now, without going into the details of the case, or anything of the kind, had your brother been working for them before he was killed? A. Yes, sir.

Q. And you were appointed administrator?

A. Yes, sir.

Q. And you brought action on account of his death? A. Yes, sir.

Q. And sued the company. When was it you were discharged

A. Sir?

Q. When was it you were discharged? What day? What year?

(Testimony of John A. Parker.)

A. I was discharged, well I couldn't tell you the date but it was right after my brother's trial.

Q. What year was it, last year?

A. No, year before, 1913, I think.

Q. 1913. Do you remember about what month?

A. I think it was in January.

Q. January. Now who discharged you down there?

A. The foreman.

Q. What is his name?

A. His name was George Rourke.

Q. During all the time you were there, was Mr. Mareen in the same position that he was when you made the settlement?

A. Yes, I guess—yes, sir, I guess he was.

Q. Did he know you were working there? Did he know about your work?

A. Oh yes, come around and see me pretty often.

Q. At the time you were discharged, what statements were made to you for discharging you?

A. Well, I asked Mr. Rourke what was the matter. Well, he said Mr. Mertz, that is the superintendent, the regular superintendent, he said he came over and told him to tell me "When you come back there is no work for you."

Q. Did he say why? A. He didn't say why, no.

Q. Have you offered to go back to work for them since? A. Yes.

Q. And what was the answer?

A. Well, they said nothing for me to do.

Q. Did they tell you why?

(Testimony of John A. Parker.)

A. Well, they said that I was——

Court: Who was he?

Q. Who was it you were talking with?

A. I went to see Mr. Mareen.

Q. You saw him personally? A. Yes, sir.

Q. Did you talk over the matter of your further work there with him?

A. Yes, I talked with him about it. He told me that I brought a case against them for my brother's death; said he couldn't keep me employed.

Q. Mareen told you that? A. Yes, sir.

Q. Now then, at that time when you wanted to go back to work what was your physical condition as to being able to go ahead and do your work?

A. I have always been in condition to go back.

Q. Have you been able to follow that occupation anywhere else, Mr. Parker?

A. Well, can't get a job anywhere else, a man that is crippled.

Q. What have you been doing since you were discharged?

A. Why my wife has a confectionery store in Florence.

Q. You help her run that, do you? A. I do.

Q. Do you own that or does she?

A. She owns it.

Q. The reason I ask you that it the charge is made that you are still making three dollars a day—charged in the answer. Tell the jury about how much you make there in that little store?

(Testimony of John A. Parker.)

A. Just make a bare existence.

Q. I thought I had asked you the question as to how long, if at all, they told you this job would last, when they made the settlement.

A. Told me it would last as long as I wanted the job.

Q. Now, that I understand was a part of the promises upon which you made the settlement?

A. Yes, wit.

Whereupon proceedings herein were adjourned until 1:30 P. M.

Portland, Oregon, Wednesday, June 17, 1914, 1:30 P. M.

JOHN E. PARKER resumes the stand.

CROSS EXAMINATION.

(Questions by Mr. GOSS:

Q. Mr. Parker, you had worked for the company for sometime before this time you got your leg bruised, had you? A. Yes, sire.

Q. How long?

A. I couldn't state exactly how long.

Q. At what were you employed at the time you got your leg hurt?

A. Mill wright.

Q. What? A. Mill wright.

Q. Mill wright. What were you doing?

A. Why helping look after the mill and mill wright, and general mill wright.

(Testimony of John A. Parker.)

Court: What work were you engaged in at the time you got your leg hurt?

A. Mill Wrighting.

Court: I know, but what particular work?

A. That is what they call it, mill wrighting.

Court: Mill wrighting I understand embraces the construction of the mill—from the time of its construction.

A. I was helpint.

Court: What doing?

A. I was breaking in new men on log deck. Learning new men occupation on log deck.

Q. Of what did your injury consist?

Mr. SMITH: Objected to as wholly immaterial under the issues in this case; I don't think it necessary to go into that case; that was settled, whatever it was.

COURT: They deny the injury to his arm was the basis of settlement, don't they?

Mr. SMITH: That was in the injury, and the result of it, the whole thing was involved in the settlement. They claim the whole thing was settled, for this release of \$400.00 we say there was an additional consideration for the release, so the question of the extent of the injuries, or how it happened, is hardly material in this case, except the fact that he was hurt.

Mr. GOSS: Our contention is, if there was no liability on the part of the company in this claim of settlement, that there was no consideration for it whatever, but it was voluntary, whatever we gave

(Testimony of John A. Parker.)

him, and on direct examination they went into the question of what happened to him at that time.

COURT: I think you have a right to examine him. Of course if there was a dispute and controversy between them, and the controversy was settled, that is all that is necessary to go in this cause of action.

Mr. Goss: This is to show what controversy there was, if any.

COURT: All right, go ahead.

Q. What did your injury consist of? What happened to you?

A. Why, while breaking this man in, there was a log came up on the—well, they call it a trough, and when it got to the trough or deck, it was split; when the tree fell, it split, and this piece was the side of the log, and we are in the habit, when a split on the log comes that way, we generally shove the piece back into the pond again, and doing so, we put a bar in between the piece split and the main log, and try to pry out. He stood on one side of the log, and I on the other, and we shoved on it; just a narrow piece, about six inch piece at this time. This piece gave way, I fell downstairs, and scraped the leg on down the shin bone, clear to the hip.

Q. Scraped the side of the leg?

A. Yes. And the other work I worked at that afternoon, why the grease got in this hurt inside the leg, and that caused the abcess to form on the

(Testimony of John A. Parker.)

side of the leg, and the poison jumped from that leg, the doctors claim, to the hand.

Q. And your hand got sore afterwards, from something in your blood?

A. While I was laid up, the hand got sore.

Q. Now, you employed Dr. Horsfall to look after your hurt, your hand?

A. At the time, no, Dr. Dix was on the case at the time of the hand.

Q. How long did you doctor with Dix?

A. Well, between that time, about fifteen days altogether.

Q. And then you got dissatisfied and went to Horsfall?

A. Well, I couldn't get him. He wouldn't come and attend to me. He split the hand all up and still called it rheumatism, etc, and I couldn't get him, and had to go to another doctor.

Q. You got dissatisfied with him and got Horsfall?

A. I could't get the doctor, and had to get some other doctor.

Q. Certainly; I say you were dissatisfied, and went and got Horsfall. That is what I asked.

A. Yes sir.

Q. And from then on, Horsfall treated you, didn't he.

A. Yes sir.

Q. And he cut off your finger? A. Yes sir.

Q. And then cut off some more of it?

A. Well, not all at once. He cut off the hand.

(Testimony of John A. Parker.)

Q. Well, he operated on you two or three times and finally cut off your hand?

A. Yes sir.

Q. During any of this time, did you go to the company with any complaint about the way you were treated, or did you go to the doctor of your own accord?

A. Well, I couldn't go anywhere. I was——

COURT: Well, what did you do? He asked you whether you went to the company about it, or did you go to the doctor of your own accord?

A. Well, I spoke to the foreman about it at the time, and the foreman of the mill, he came to see me, and I told him necessary to get another doctor.

Q. You wanted to, and you never took this up with any of the officers of the company, or sent any word to them about it.

A. I reported to the foreman, and he spoke to the superintendent at the time, Mr. Demangen.

Q. Did you speak to Demangen personally?

A. I had no chance to see Mr. Demangen.

Q. Whom did you speak to? A. Mr. Bain.

Q. And when did you first go to Mr. Mareen?

A. Why after I got so I could carry the arm around in a sling.

Q. You went to Mr. Mareen. Where was it?

A. Well, I think the first time I met him was down in the yard, the company's yard.

Q. Down in the company's yard, and what was said at the time?

(Testimony of John A. Parker.)

A. Well, we had different conversations in regard to the hand, and how I lost it, etc.

Q. How you were getting along, etc?

A. Yes, I guess so.

Q. Was anything said about a settlement?

A. Why, yes, he talked with me about it.

Q. What was said about a settlement then?

A. Well, he says,—we talked of different things, and he said we would have a talk in the office a little later on.

Q. Well, did he,—were any statements made by him as to what he was willing to do, or what the company would do?

A. Well, he didn't bring it up exactly what would do then at that time; just talked things over in general.

Q. What was said? Anything that was said. You talked it over. Give us a general idea what the talk was, and what it was about. That is all I want.

A. Well, it was in regard to how I got hurt, etc.

Q. How it occurred? A. Yes sir.

Q. What did you tell him then?

A. Well, I told him just as I tell you now, how the case started, how I got hurt, etc.

Q. Did you tell him that Dix had neglected your case? A. Yes sir.

Q. And what else was said? Anything about your going to work?

(Testimony of John A. Parker.)

A. Well, not exactly, the first time we talked, we didn't say anything about going to work. I had just got out of bed, so that I could just get down around the yard at that time.

Q. Anything about paying you anything, or anything about paying the doctor at that time?

A. Not at that time.

Q. Then all you remember was said at that time was that you told him how it was hurt, and that Dr. Dix hadn't properly taken care of you, Is that it?

A. That is about the sum and substance of that particular.

Q. And he said come to the office and talk it over?

A. Yes. I met him several times, different times, you know.

Q. Where did you meet him next time, if you remember?

A. When I would be down around the yard, would stop and talk, and walk around with him through the mill. We talked of different things like we would do until I got so I could go to work.

Q. When was anything first brought up about going back to work?

A. Well, he told me when I got ready, to be able to handle anything, they would put me to work to do something.

Q. Yes.

A. And named over different jobs I could do, said they could put a man with two hands on another job,

(Testimony of John A. Parker.)

and put me on it if necessary; said any job I could see I could do, he would be glad to put me at it.

Q. And what was said about the company paying the doctor, or anything of that kind, or paying money of any kind?

A. Well, went on odd days, and wanted to know what I would take to settle the case, and———

Q. He wanted to know. He brought that up? You didn't bring that up.

A. That is about the way it was brought up, yes.

Q. He asked you first what you wanted to settle it?

A. Just asked what kind of a settlement could come to.

Q. Didn't you first tell him you wanted some pay for it?

A. No, I don't know as I did.

Q. Well, what did you tell him you wanted?

A. I don't know as I told him I wanted anything. He just offered me what—just offered me so much money.

A. I don't know as I told him I wanted anything. He just offered me what—just offered me so much money, and what they could do.

Q. Was anything said about half time for the time you were laid off?

A. Yes. In the settlement that is what we settled on.

Q. That is what you settled on? About half time for the time you laid off? A. Yes.

Q. And did you ask for that, or did he propose that himself?

(Testimony of John A. Parker.)

A. He proposed it.

Q. You knew that was the way they generally settled with the men anyway, wasn't it?

A. Well, I never had any—I never had any idea to know what they did settle for. I never had any trouble with the company or never had anything to do with it one way or the other.

Q. Well, had you made inquiries or found out how they had settled with other people?

A. No, I never.

Q. Didn't you understand they usually gave a fellow half time when off?

A. No, I didn't know anything about it.

Q. Never heard that?

A. I have since that.

Q. When was it you first talked about it at the office?

A. Oh, somewheres in May, I think it was.

Q. Had you gone to work before that?

A. No.

Q. You hadn't gone to work before that?

A. Not when I first talked, no.

Q. What was said in the first conversation in the office?

A. Well, we talked over what he would do, and what he would give me, etc. He gave me time to think it over, and I rode down with him in the wagon to town, and different parties came, and urged me to settle with them and take what I could get.

Q. And what was said in these conversations about giving you a job, about keeping you employed?

(Testimony of John A. Parker.)

A. Well, I said before, he promised to give me employment as long as I wanted it.

Q. Said he would give you any work you could do?

A. Yes Sir.

Q. And he said that every time he talked with you, always said he would give you a job as long as you—any job you can do, as long as you want it?

A. Yes sir.

Q. And didn't he say that right at the start, that the company always does that?

A. Why, he told me that they had men in their employ for years, and always kept them employed, and he said, "You will always have a job, as long as the company is a company; that is would always have employment."

Q. And that was said before you had agreed on any money payment or on any half time, or on any pay for the doctor, wasn't it?

A. He said that all the time.

Q. Yes.

A. He said he would keep me employed.

Q. And you did go to work, didn't you, for the company, as soon as you were able?

A. Yes sir.

Q. When was that?

A. Well, somewhere I think probably, April or May somewhere.

Q. What work was it you were put at?

A. I was helping pull levers in the trimmer box.

Q. And then what did you do next?

(Testimony of John A. Parker.)

A. Well, I got appendicitis, took appendicitis while I was working there.

Q. How long did you work as extra man and trimmer?

A. Well, somewhere around something over a month.

Q. What wages did you get doing that?

A. Why, if I remember right, I think it was \$2.50.

Q. And then you say you had appendicitis?

A. Yes sir.

Q. And when was it you made this last settlement with the company? After that? A. Yes sir.

Q. How long were you gone with appendicitis?

A. I guess probably three months.

Q. Three months. And then when you came back to work, did you see Mr. Mareen, or anyone before you went to work again.?

A. Yes sir.

Q. Was that the time you made the final settlement?

A. I think it was.

Q. You think it was. Did you see him after you had the appendicitis; that is, after you laid off this time, and before you made the final settlement, as we call it?

A. Did I see him before that?

Q. Yes.

A. Yes, I see him when I made the settlement, before I went to work later on. I saw him when I made the settlement, of course.

(Testimony of John A. Parker.)

Q. I mean after you had appendicitis, and before you made the settlement, did you see him and have other talks with him, or was that the first one you had?

A. When I settled with him.

Q. Yes. A. Yes.

Q. Then from the time you quit with appendicitis, until you made this settlement, you had no conversations or other conferences with him, with regard to settlement, or anything?

A. Oh, I guess probably we had different conversations.

Q. When was the question of the doctor bill first brought up?

A. Well, that was before I had appendicitis.

Q. Before you had appendicitis. Did you show him the amount of the bill?

A. Yes, I gave him the bill.

Q. What did he say about it?

A. Well, I told him first what it would be.

Q. Yes.

A. I went to Mr. Horsfall, and I asked, I asked what the bill would be. Well, he says, "Jack, you have had such a hard time of it etc., just make it in round numbers \$175." So later I went and saw Mr. Mareen and told him what the bill was and Horsfall made bill out for \$210. Then Mr. Mareen wanted a statement of the trips he made to see me, etc., and when Dr. Horsfall made his bill up, it was all together \$210, and I took this bill and gave it to Mr. Mareen, and he said he wouldn't pay it, said that he—the bill

(Testimony of John A. Parker.)

was \$175., and that is all he would pay. So I went and seen Dr. Horsfall again, and told him that Mr. Mareen said he wouldn't pay that bill of \$210., that the bill was given in the first place \$175., and I says, "You take this \$175, Doc.," I says, "I think you have treated me on the square," I says, "When I get able, I will pay it." So he said, "Well, just pay that \$175." he says, "if the company is small enough to jew a man down to \$175. why, I will take that."

Q. And that was in September, wasn't it, when you made the settlement?

A. I think that bill was paid before that. I gave the check to the doctor right over. I don't know when the date.

Q. Well, is this the bill that the doctor rendered, do you know, the one he gave the company?

A. Probably it is. I don't remember it very well.

Q. Then these negotiations with the doctor about the amount of the bill was before you had the appendicitis?

A. Yes, I think so.

Q. And he had agreed to take \$175. before you had the appendicitis?

A. Yes, sir.

Q. And then after that you came back, When was the doctor paid? At the time you signed the written settlement?

A. No, he was paid before that.

Q. He was paid before that. Well, is that the statement you signed at the time you had the final settlement?

(Testimony of John A. Parker.)

A. Yes, I guess it is.

MR. GOSS: I will offer that in evidence. (To Mr. Smith) This is the one I submitted to you.

Marked "Defendant's Exhibit A".

Q. Now, you don't think you had any conversation between the time you came back, got over appendicitis, and the time you made this written settlement?

A. Yes, sir.

Q. Oh, you did have some?

A. After this written settlement?

Q. No, before the settlement was finally made.

A. Well, at the time I had that settlement, he told me then that—I asked him why he didn't put that in writing, and he says these blanks are already made out, etc., He says will be no trouble about any settlement we have.

Q. Now, that isn't what I asked you at all, is it? I asked you if you had any other conversations with him between the time of that settlement—between the time you were taken sick and the time you signed this paper?

A. We had several, I told you one time before.

Q. You had several. Did you have one the day before you signed this?

A. Well, I couldn't remember just when, but several that day before this paper was signed.

Q. Just a few days before?

COURT: After you had appendicitis, and before the paper was signed, did you have any conversation with the superintendent about this settlement of the

(Testimony of John A. Parker.)

matter? After you had appendicitis, and before this paper was signed?

A. Yes, we had several talks.

COURT: That is what he is asking you about.

Q. Where were they? In the office?

A. Well, once in the office; once or twice in the office, and once down around the yard.

Q. And was the settlement entirely agreed upon before you had the meeting in the office, at which this paper was signed?

A. Yes, sir.

Q. It was all agreed upon before that?

A. Yes, sir.

Q. How long before?

A. I think it was about one or two days before we—

Q. One or two days before. And at the time—at the time you met him there in the office, did you have any extended conversation, or was it all agreed upon beforehand, and you just went in and closed up?

A. Oh, we talked a little while after we got in.

Q. You talked a little while then. Did you talk after you signed this too? A. Yes, sir.

Q. And that is the time you asked him if he didn't think it was Dr. Dix's fault, and he said yes?

A. Yes, sir.

Q. At the time you signed this up, was there any one present except yourself and Mr. Mareen?

A. No, sir.

Q. Mr. Nelson stepped in and witnessed it?

A. Yes, sir.

(Testimony of John A. Parker.)

Q. After he asked you if you signed it? You signed it.

A. If I remember, I think—

Q. You read this over before you signed it, didn't you?

A. Which?

Q. This written statement I have just put in evidence?

A. Yes, sir.

Q. And it reads it is for \$410.75. How did you arrive at that amount?

A. What?

Q. How did you arrive at that amount, \$410.75?

A. He figured up the time I lost, split my wages in the middle.

Q. Called it half time?

A. Called it half time.

Q. And what did you add to that?

A. Didn't add anything to it.

Q. Didn't add anything to it. They paid the doctor \$175.

A. Yes, sir.

Q. They paid that too, did they?

A. They had paid that beforehand.

Q. Oh, they had paid that beforehand; and at this time, just what did Mr. Mareen say with regard to your work and having a job?

A. Ask the question again, please.

COURT: What did Mareen say at the time you signed that written agreement about your work?

(Testimony of John A. Parker.)

A. Well, at the time I signed the agreement, he promised to keep me employed.

COURT: What did he say? What language did he use?

A. He said there was many jobs I could have, and they could always find a place for me.

Q. Is that all he said?

A. Well, he talked along those lines. I couldn't remember just now what he said, word for word.

Q. What did he say about giving you a job?

A. Well, if I remember right, he said that he had spoken to the superintendent, and foreman of the mill, and they were going to look for different positions that I could do.

Q. What did he say about giving you a job as long as you wanted it, you say, or something of that kind?

A. He said he would always keep me employed, as long as I wanted.

Q. As long as you wanted it? A. Yes, sir.

Q. Did he tell you that before or after this was signed?

A. told me that different times.

Q. Told you that all along? A. Yes, sir.

Q. And you had been working before that for them too, until you got appendicitis? A. Yes, sir.

Q. And you understood that as soon as you got over the appendicitis you could go back to work, didn't you?

A. Yes, sir, hadn't settled with them at the time I got appendicitis.

(Testimony of John A. Parker.)

Q. You hadn't settled with them?

A. Hadn't settled. We had talked over, but we had never settled anything.

Q. Oh. When you got this final settlement, I am trying to get at just what was said when you signed these papers. That was the time you settled when you signed these papers?

A. That was the final settlement.

Q. He said then before you signed the papers, did he that the company would find a place for you, and you could work as long as you wanted to.

A. Yes, sir.

Q. He didn't say anything about any conditions about your work?

Q. No, sir.

A. He didn't say—did he say if you settled the case he could do that?

A. That was the understanding, yes.

Q. Well, but did he say if you settled the case and took this money they would do that, or did he say that anyway?

A. Yes, sir.

Q. Did he say if you didn't settle the case, he wouldn't have you work for them?

A. Never mentioned anything like that at all.

Q. Never did. And then he said this, did he, before you signed the papers?

A. Yes, sir.

Q. Right at the meeting, at that time?

A. At different times he said that.

(Testimony of John A. Parker.)

Q. I know at other times, but did he at that particular time?

A. Yes, sir, at that time.

Q. And after you had signed the papers, what did he say? Anything?

A. Said the same thing.

Q. Did you ask him what was to prevent the company from firing you as soon as you signed the papers?

A. No, I had talked about that before.

Q. What?

A. I talked with him about that before.

Q. What did he say about that?

A. He said no question about that. He said he had men in their employ that they kept employed right along, didn't make any difference whether crippled or not; so long as they were crippled they were in their employ.

Q. That the company would play fair, is that what he said?

A. No, he never used fair at all.

Q. Didn't he use that word? A. No, sir.

Q. Didn't he say the company always treated the men fairly?

A. Yes, sir.

Q. All right. That is the same word practically.

A. Well, yes, in a different light.

Q. And he told you they always treated the men that way, didn't he?

A. That is what Mr. Smith told me, yes.

(Testimony of John A. Parker.)

Q. That is what Mr. Mareen told you too, didn't he?

A. Yes, I guess he did.

Q. And you know that there are men, you know of men working there that had been hurt, and they kept them right along?

A. I don't know kept them there. I don't know of any men in their employ at that time that had been crippled. They told me about cases back east.

Q. And then after this settlement, you went to work, did you?

A. Yes, sir.

Q. You called his attention, you say, to the fact that that wasn't—about the job wasn't in the written form there at all?

A. I called his attention to it at the time, yes.

Q. What did he say about that?

A. Well, he says these here are made up in form like, and the company has this kept on record; "in regard to your being kept to work, that will be all right," he says, "You will always be kept employed."

Q. "You will always be kept employed," and after that you went to work, did you, right away?

A. Yes, sir.

Q. That is, the next Monday morning you went to work?

A. Probably.

Q. And what were you put at? What work?

A. In the trimmer box helping pull levers.

(Testimony of John A. Parker.)

Q. Helping pull levers in the trimmer box, how long did you work there?

A. I worked there about—now you are talking about—that is before the settlement?

COURT: After you signed this agreement.

A. Oh, well, I went over to Bay City then.

Q. Yes.

A. As foreman of the yard around different places.

Q. Foreman in the yard?

A. Taking machinery out of Bay City, etc.

Q. They were taking down the Bay City Mill there, were they?

A. Yes.

Q. And you had a crew of men; eight or ten men were tearing down the mill?

A. Taking machinery out, yes.

Q. And then how long did you work at that?

A. Well, as long as until they got the machinery all right, and then the construction foreman, he came over and he took charge.

Q. That is Stack? A. Yes, sir.

Q. Then what did you do?

A. Went on as time keeper and kind of straw boss under him.

Q. Then when that mill was completed, what did you do?

A. Went in the trimmer box.

Q. And you stayed there until when?

A. Stayed there until I got canned.

COURT: I didn't understand that.

(Testimony of John A. Parker.)

A. I stayed there until I got laid off.

COURT: You said this morning you quit and went over to attend to some other business, and when you came back you were discharged.

A. I was always on the job, but I asked for a lay-off to go over and come back.

COURT: That is what I wanted. You gave the impression you worked up continually until the time you were discharged.

A. No, I asked the foreman for a lay-off, and he said they had a man they could put in my place until I came back. When I came back, why, they said they had no job for me.

Q. That was when you were laid off, on this lawsuit, as administrator of your brother?

A. Yes, sir.

Q. Now, before you did that, you say you asked the foreman for that, but didn't you have a conversation with Mr. Mareen before that about laying off, and about bringing this suit for your brother?

A. About bringing the suit?

Q. Yes, as your brother's administrator.

A. Yes, I had a talk with him.

Q. What?

A. Yes, sir.

Q. That is before you laid off? Before you brought the suit?

A. Yes, sir.

Q. And what did Mr. Mareen tell you about it then?

(Testimony of John A. Parker.)

A. He told me he didn't want me to bring that suit.

Q. Yes, but what did he say about—you said something about your job then, didn't you, too?

A. He sent for me to come over and see him.

Q. Yes. That isn't an answer to my question. But didn't he say something about your job?

A. I don't remember.

Q. Didn't he tell you that you are liable to lose your job if you bring that suit?

A. No, sir.

Q. He didn't. Didn't any one tell you that?

A. No, I don't know as they did.

Q. You don't know that they did. Weren't you given to understand that if you brought that suit, you would lose your job?

A. What?

Q. Weren't you given to understand that if you brought that suit, you would lose your job?

A. Well, kind of hinted. Some of them hinted that at different times.

Q. Yes. A. But—

Q. But when Mr. Mareen sent for you this time, and had this talk with you, he didn't say anything about that?

A. No, I don't know as he told me he would lay me off on account of that suit or not. I don't believe he did.

Q. You don't believe he did? A. No.

(Testimony of John A. Parker.)

Q. You don't know whether he did or not.

A. I don't believe.

Q. Do you know he didn't?

A. I know he didn't.

Q. You know he didn't.

A. Tell me he would lay me off on account of bringing that suit

Q. Did he say he would lay you off on any account?

A. No, sir.

Q. He just asked you not to bring it?

A. Yes, sir.

Q. That was all. And, now before that time, didn't you quit once?

A. I took a lay-off.

Q. You took a lay-off. Didn't you turn in your time and quit?

A. I did not.

Q. In September? A. No, sir.

Q. You didn't? A. No, sir.

Q. And didn't you quit and strike for higher pay?

A. I asked for more money, I didn't quit.

Q. You didn't quit? A. No, sir.

Q. How long did you lay off?

A. About a week.

Q. About a week. Did you ask for a lay-off?

A. Yes, I told him I was going to take a lay-off.

Q. Didn't you tell him you would quit?

A. No, sir.

Q. And didn't you turn in your time, and get your pay?

(Testimony of John A. Parker.)

A. No, sir.

Q. You didn't? A. No, sir.

Q. And when you came back to work that time in September, what did you say about your job? Whom did you ask for a job again?

A. When was that? After the trial?

Q. No, no, in September, when you quit before this.

A. I just went back and went to work, that is all.

Q. Just went back and went to work again at your job? A man had your job?

A. He had my job, but he didn't hold the job. I went back to work.

Q. He didn't hold it when you went back? Did you have any conference with him about it.

A. With him?

Q. Yes, about this job? A. Yes.

Q. What did you tell him?

A. Oh, told him I was going to try and get some more money. Was promised \$3.50 a day and I was going to see if I couldn't get it.

Q. Who promised you \$3.50 a day?

A. Mr. Mareen told me he would give me the going wages at the time.

Q. That job you were working at as trimmer in the East Side Mill was \$3.00?

A. \$3.50 was the going wages at that time.

Q. Didn't that particular job pay that?

A. No one getting \$3.00. All getting \$3.50

Q. Didn't the man working there ever since get \$3.00?

(Testimony of John A. Parker.)

A. Yes, but they held them at my rate of wages, held the men down.

Q. Held the men down to the same wages they paid you? A. Yes, sir.

Q. Does any trimmer man in that East Side Mill get \$3.50 a day?

A. Only one trimmer there.

Q. That is a short log mill?

A. Well, I tell you, Mr. Goss, when I took that job at \$3.00 a day, they were cutting 35,000. After they got to running a month or so, they promised me \$3.50 a day, the same wages in the other mill. He says, "Yes, when you get to 125,000, we will be able to pay you that money, and not until." When the time comes, we got 125,000, I went to him about it, and he says, "spruce is away down, the price is away down on spruce, and I can't see it." That was talk we had.

Q. That is a spruce mill.

A. Was at that time.

Q. Well, they cut spruce, cedar and white fir at that time.

A. And I never did get over \$3.00 a day.

Q. That is short log mill, isn't it?

A. Yes, sir.

Q. And that is all they ever paid in that mill you know of? The trimmer men over in the big yellow fir mill get \$3.50?

A. Yes, sir.

Q. Now, you say at that time you took a lay-off in September, you just took a lay-off?

(Testimony of John A. Parker.)

A. Yes, sir.

Q. You claimed you were going to quit?

A. No, sir.

Q. You didn't tell them you had quit?

A. No.

Q. Didn't tell anybody you had quit?

A. No, I don't believe I did.

Q. And when you went back to work you didn't have to go and see the foreman about getting in again?

A. I told them I was coming back to work again.

Q. Did you go and see Murch? A. No.

Q. Didn't see Murch at all?

A. I met Murch a couple of times, and he said, "Jack, when are you going back to work?"

Q. During that week you went off?

A. No, I went up to the ranch, my father-in-law's ranch. He said "You better go back and go to work. Take a couple of days more and go to work."

Q. Why did he tell you to go back and go to work?

A. They needed me.

Q. Then Murch wasn't the man who put you back to work. Rourke was the foreman.

A. He was superintendent, and he could can me any time he wanted to.

Q. Rourke was foreman in that mill?

A. Mr. Rourke, yes.

Q. When you quit that time in September, you simply told him you were taking a lay-off?

A. Yes, sir.

Q. Didn't tell him you quit?

(Testimony of John A. Parker.)

A. Well, I told—

Q. Didn't you tell them you would have to have \$3.50 a day or you would quit?

A. No, I don't believe I did.

Q. And didn't you turn in your time to the foreman?

A. No, sir, I didn't.

Q. And didn't you tell the other men around there that you had got that fixed, and they would have to pay you back wages?

A. No, sir.

Q. When you quit the company, or took your lay-off, I mean, when you tried the lawsuit, you just took a lay-off then, did you? A. Yes, sir.

Q. For how long?

A. Well, I told him I was going to the trial, and didn't know how long it would be before I was back.

Q. Told them what?

A. Told them I was going over to that case at my brother's. I had to go. I was administrator of the estate. "That will be all right," he says, "get a man to take your place until you come back."

Q. That was Rourke, was it? A. Yes, sir.

Q. When you came back they wouldn't give you, the place?

A. Mr. Murch told Rourke when I got back to tell me they had a man in my place.

Q. But you didn't hear that until you got back.?

A. What?

Q. You didn't hear that until you got back to work.

(Testimony of John A. Parker.)

A. I didn't know anything about it.

Q. Not until you got back to work?

A. Not until I got back to work.

Q. And then, what did you do then?

A. When I got back?

Q. Yes.

A. I went to work in the trimmer box.

Q. You couldn't go to work, They said they had a man in your place.

A. Oh, you mean that time?

Q. This last time, yes.

A. Yes, I went home.

Q. Who did you see of the company about it? Anybody?

A. Why, no, I don't believe I did at that time.

Q. Did you go to see Mr. Mareen?

A. No, I didn't go to see Mr. Mareen. I asked Mr. Rourke whose orders it was. He said it was Mr. Murch's and I had been familiar with the company enough to know that when orders came that way, they came from Mr. Mareen.

Q. You didn't tell Mr. Rourke or Mr. Murch or any of them that they had agreed to give you a job and keep you there right along as long as you wanted it, did you?

A. I don't believe I did.

Q. And when did you go to Mr. Mareen about it, or to any one?

A. Well, I waited until Mr. Smith came.

Q. How long was that?

(Testimony of John A. Parker.)

A. Oh, I don't know; probably a month.

Q. Probably a month?

A. I don't know exactly.

Q. And then did you go to Mr. Smith?

A. Yes, sir.

Q. Mr. C. A. Smith? A. Yes, sir.

Q. President of the company. What did he say?

A. He told me that I brought a case against the Smith Company for my brother's death, and it was up to Mr. Mareen; whatever he said, went.

Q. Did you tell Mr. Smith that they had agreed to keep you as long as you wanted to work?

A. He knew that; he understood that.

Q. How did he understand it? Did you ever talk to him about it?

A. Yes, he told me that himself. He would always see I was employed.

Q. When did he tell you that?

A. He told me that at the time I was carrying my arm around in a sling.

Q. That was before you made the settlement with Mr. Mareen?

A. Yes, sir.

Q. He said he would always see you were employed?

A. Yes, sir.

Q. And you always had that statement of his in mind, did you?

A. Yes, sir.

(Testimony of John A. Parker.)

Q. And what did he tell you then this time when you reminded him of that, or didn't you remind him of that statement?

A. I don't know as I did. I believe I did bring it up.

Q. What did he say about it?

A. Well, he said that as far as he was concerned, he says, "You can go back any time. You see Mr. Mareen and talk to him about it." We talked a long time on different subjects, etc., and that is about all.

Q. He said as far as he was concerned, you could go back to work any time you wanted to?

A. Yes, sir.

Q. And you would have to see Mareen about it?

A. Yes.

Q. Did he admit that he promised you work any time you wanted it, as long as you wanted it?

A. Well, he didn't admit it right at that time, but it was understood that way.

Q. When and where was this conversation with Mr. Smith?

A. In his office.

Q. In his office, and when was it?

A. I don't know as his office, or whose office it was, but in the C. A. Smith building, I think probably his office.

Q. And when did you see Mr. Mareen about it?

A. Well, I went to see him before I brought this case, before I started it.

Q. Before you brought this case?

(Testimony of John A. Parker.)

A. Before I started it.

Q. How long was that after you had seen Mr. Smith?

A. Well, probably, I don't know, a week, a couple of weeks.

Q. Wasn't it about a month?

A. Might have been.

Q. Yes.

A. Oh, I know it was before I brought the suit.

Q. Before you started this suit. What did he say about it?

A. Said he couldn't keep me employed.

Q. Couldn't keep you employed. Did he say why?

A. Well, he brought the subject up, that I was always looking for trouble, etc., with the company, and I told him I just wasn't looking at trouble at all; just wanted justice.

Q. You had at one time started an agitation against Dr. Dix there hadn't you?

Mr. SMITH: That is wholly immaterial, if the Court please. If he wants to go into it, go ahead. We don't object.

A. You bet I did. At that time I had my hand taken off, the boys in the mill there all knew the circumstances from start to finish, and the filers in the mill at that time told me to get a petition up and take it around; they didn't want a man like that to butcher men up.

Q. Anything else at that time?

(Testimony of John A. Parker.)

A. Well, on the way downstairs, before I got the petition up, I spoke to Mr. Mareen about it, and Mr. Mareen told me, "Jack, don't start anything like that now. When Mr. Smith gets here", he says, "we will make a change." And taking him at his word, they never made the change. The change is not made yet.

Q. Anything else?

A. I don't know of.

Q. Did you go back to Mr. Mareen again after this conversation you had some two months after you were told you couldn't have a place there, did you see him more than once about that?

A. I don't know as I did.

Q. Then you brought the suit. Now, what did you do in the way of work after this time?

A. Well, after I got laid off, I started writing insurance, and first, while out in business, why, I did pretty well. I came to Portland on a case for a young fellow that had his foot taken off, and when I went back the C. A. Smith Company or their superintendent ordered me off the works. Told me I couldn't be on their plant any longer; and I came up here as a millwright, and when I went back, why I was ordered off the works, where I could write insurance. I wasn't allowed at all.

Q. Who was it ordered you off?

A. Mr. Murch.

Q. That is, he ordered you off the place in business hours?

A. He told me to stay off the plant entirely.

Testimony of John A. Parker.)

Q. And then what did you do?

A. Well, I seen then that nothing to do but get away from around there altogether. At such things a man couldn't make a living around here, so I went to where I am living now in Florence.

Q. In Florence, and bought out a pool hall, didn't you?

A. No, sir.

Q. Haven't you a pool hall there now?

A. My wife has a confectionery store there and two tables in it.

Q. Oh, your wife bought it. That is what you have been running?

A. My wife is running that, yes.

Q. You run it, don't you?

A. I run it?

Q. Yes.

A. Well, I am working around there, yes.

REDIRECT EXAMINATION.

Questions by Mr. Smith:

Just a moment, we will clear that case up you were up here on. You say that is a case where a fellow got his foot taken off. Was that also a case against this same company?

A. Yes, sir.

Q. You were a witness there, were you?

A. Yes, sir.

(Testimony of John A. Parker.)

Q. And it was after that that Mr. Murch told you you should not come on their premises any more down there?

A. Yes, sir.

Q. What had you been doing about their premises there?

A. Why these fellows I am all acquainted with, and I can always do business with those fellows I am acquainted with better than I can strangers. They all knew my condition, etc., and I could always write insurance policies on these parties.

Q. All you were doing was writing insurance for the men, was it?

A. Yes, sir.

Q. They have asked you about a number of conversations I didn't ask you about in direct. Do you remember a conversation between your mother and Mr. Mareen?

A. Yes, sir.

Q. Were you present?

A. Yes, sir.

Q. State what Mr. Mareen said or state what the conversation was between those two? Between yourself and Mr. Mareen in your mother's presence, is the way it was.

A. Well, I asked Mr. Mareen if he didn't remember the promise to keep me employed, and he said he did.

Q. When was this conversation between you and Mr. Mareen in your mother's presence?

A. That was just before I brought this case.

(Testimony of John A. Parker.)

Q. Now, another question. After you brought the case about your brother's death, and before that case was tried, did you go ahead working for the company?

A. Yes, sir.

RE CROSS EXAMINATION.

Q. You say you were present when Mr. Mareen and your mother were talking?

A. Why, my mother was present when Mr. Mareen and I were talking.

Q. Oh, that is it. And that was another time that you went there after you had been refused work, and before you brought the suit?

A. Well, I talked with Mr. Mareen on the phone before that, and that was the last time that I was talking with him was when my mother was present.

Q. What did Mr. Mareen say at that time?

A. Well, we talked the whole thing over and just about the same thing as we had been talking about.

Q. What did he say about having agreed to give you a job, as long as you wanted it?

A. Well, he admitted that he had promised to give me a job as long as I wanted it.

Q. He admitted he had promised that but said he wouldn't do it.

A. Well, he said he couldn't under the conditions, etc.

Q. Isn't that the only time you came to him after you had gone back and been refused a job? Isn't that conversation the only one you had?

(Testimony of John A. Parker.)

A. No, it ain't the only one, no.

Q. When was the other—before that?

A. I talked to him on the phone.

Q. You talked to him over the phone?

A. Yes, sir.

Q. Wasn't that the only time you went and talked to him personally?

A. I couldn't say.

Q. You couldn't say?

A. Probably it was.

Q. And what was the conversation over the phone?

A. I asked him if he would put me back to work. Well, I asked him if I couldn't make an appointment with him. He said, "What do you want to talk about?" I told him. Well, he said, "Come over some time," and he said, "We will have a talk."

Q. Now, how long after the first time you were hurt was it? That is, when you got your leg bruised before you went back to work? You worked the rest of that day, didn't you?

A. Why, I think probably, now, I worked the rest of the day, yes.

Q. Then how long after that did you go back to work?

A. I went back to work, I think it was Christmas or the day afterwards.

Q. Didn't you go to work just a few days afterwards again?

A. No.

Q. And work for three or four days?

(Testimony of John A. Parker.)

A. No. Well, just a short time after, I did too. I went back with the hand all tied up and helped. They were busy about some work, and they had got no man they could put in to take the place, and I went down with my hand in a sling tied up, I think.

REDIRECT EXAMINATION.

Q. Is your mother here in this country?

A. No, sir.

Q. Where is she?

A. Amherst, Nova Scotia.

Q. Amherst, Nova Scotia, Canada—is that the place?

A. Yes, sir.

Witness excused.

Mr. SMITH: I will offer in evidence the deposition of Katherine B. Parker, taken by stipulation signed by Mr. Goss and Mr. Stoll.

Mr. GOSS: The only objection we have, we want it understood at this time that the witness is not here.

Deposition of Katherine B. Parker read in evidence and marked "Plaintiff's Exhibit 1".

JOHN E. PARKER. RECALLED FOR FURTHER
CROSS EXAMINATION.

Questions by Mr. GOSS:

This deposition of Mrs. Parker that has just been read was taken down there at Marshfield, in a case—that is before this case was started here, wasn't it?

A. I couldn't state, I couldn't state the date that was taken.

(Testimony of John A. Parker.)

Q. It was taken in a case, exactly the same case, but you started it in the courts down there in Coos County, wasn't it?

A. I couldn't state anything about that.

Mr. SMITH: We will admit that; that that case was dismissed, and this one was started.

Mr. GOSS: That is all good enough.

Q. Did you testify you were up here on another case? Up here in the case of West vs. The Smith Lumber & Manufacturing Company?

A. Sir?

Q. You have mentioned testifying in another case up here. That was the case of West vs. The Smith Lumber & Manufacturing Company, was it?

A. Yes, I was up here on that case.

Q. In that case didn't you testify as to what you were doing?

A. I think I testified that I was an insurance agent.

Q. And didn't you testify in that case that you were doing well at that occupation?

A. I don't remember of stating anything about it.

Q. As a matter of fact, at that time, you were doing well in that?

A. I did a pretty good business the first three or four or five months I went in the business.

Mr. SMITH: And that was before they had forbidden you to keep away, forbidden you to come on their plant?

A. Yes, sir.

Witness excused.

(John F. Bain.)

JOHN F. BAIN

A witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. STOLL:

State your name?

A. John F. Bain.

Q. Where do you live?

A. Living in Bandon, Oregon, Coos County.

Q. Do you know the plaintiff in this case, Mr. Parker?

A. I am acquainted with the gentleman.

Q. Know Mr. Mareen?

A. Also acquainted with Mr. Mareen.

Q. You may state to the jury what position you occupied in the employ of the defendant at the time that Parker was hurt.

A. I was filling the position in the mill as foreman, mill foreman and head millwright.

Q. Which Mill?

A. The only mill they had in operation at that time. What is now known as the large mill, Marshfield, the only mill they had in Marshfield.

Q. What was Parker engaged in at that time, that is, before he was injured?

A. Parker, at the time he was injured?

Q. Yes, and before.

A. At the time and before Parker was injured, he

(Testimony of John F. Bain.)

had been employed by the company working under my directions as millwright; in other words, we called it a chaser on the upper floor, a trouble finder.

Q. Now, after he was injured, I will ask you to state whether you had a conversation with Mr. Mareen, with reference to effecting a settlement with him, and if you had such conversation, state what it was and where it occurred.

A. I did have a conversation with Mr. Mareen in reference to the settlement with Parker.

Q. Just state the conversation.

Mr. GOSS: You were the mill foreman, were you?

A. I was.

COURT: Yes, he was mill foreman. Go ahead.

Q. What was your question?

COURT: State when and what it was. You said you had a conversation with Mareen about settlement.

A. Yes, about the time that Mr. Parker would be able to go to work after the accident that he had had, Mr. Mareen spoke to me one evening in regard to it. Asked me what I thought about Parker going to work again. I told him I thought it was a pretty good idea, and I also told him that I thought the sooner we got Jack to work the better it would be for all of us. I claimed us as I claim myself one of you when I am working for them.

Mr. GOSS: I object, unless they fix the time, as incompetent, irrelevant and immaterial. He went to work. That, as I understand is when he first went back to work after he was hurt.

(Testimony of John F. Bain.)

A. After his accident.

Mr. GOSS: I don't see what this conversation would have anything to do with the settlement, as it occurred long after that.

COURT: Not unless connected up.

Mr. SMITH: I will connect it up. It will be connected up presently.

A. I talked the matter over for a few minutes. He finally advised me to see Mr. Parker, get him back to work which I did. I called upon Mr. Parker that evening on my way home, and asked him how he felt in regard to going to work. He said he thought he would be able to go to work, but he believed he ought to have something out of that. I finally told that I thought the company would do the very best thing with him, and advised him to go to work, and didn't tell him,—did not tell him that Mr. Mareen or any other of the company, had mentioned me in regard to it. He finally thought the best thing he could do was to go to work, and they would probably see that he came out all right. Another day or two later, I couldn't say whether the next day or not—very shortly after—Mr. Mruch spoke to me in regard to Parker going to work. And I told him I thought Jack would be on the job in a few days. I thought he was feeling as though he was going to work, and he also was very anxious that Jack should go to work, impressing on my mind that he thought it was a better thing to get him to work, take the other things off his mind, especially being crippled.

(Testimony of John F. Bain.)

Q. What did Mr. Mareen say about getting a settlement with him? What did he inquire of you in reference to giving—

Mr. GOSS: I object to this as incompetent, irrelevant and immaterial, as having occurred before any settlement took place, and not a part of any settlement, or part of any transaction.

COURT: They will have to connect that settlement; plaintiff will have to connect with the settlement itself. It probably leads up to that.

A. Mr. Mareen told me another day or two later, than when Mr. Murch talked to me that he had talked to Jack, and Jack would be back to work in a few days, possibly Monday morning. It was the middle of the week or later, when he spoke to me, and I of course, being interested in the case, asked whether or not he had made a settlement. He said to me that he had agreed with Jack for a settlement. He also told me that he had agreed to pay Jack's doctor bill, give him some money, put him to work, and that I was to find Jack something to do that he could do. Asked me at different times what there was in the mill I could put him at. I explained three different positions that I thought we could use Jack at to very good advantage, and then we talked the matter over again.

Q. What was said about the length of time that this job was to last?

A. Talking the matter over again, he told me that we were to put Jack to work, and that he was to keep him working. He had promised him a job, and I

(Testimony of John F. Bain.)

asked how long, how I could figure, whether we was to keep a job for Jack open at all times, or whether he was to draw a salary; didn't state it possibly in those words, but my intention was to find whether he was drawing salary whether working or not. He impressed on my mind in so many words that Jack was to have a job with him as long as Jack wanted to work. Finally on—I think at any rate the first day of June, either first or second day of June, 1907, Jack went to work under my instructions, came back and applied for work. I put him in the trimmer cage as a helper, with one of the trimmers; explained to him at the time that undoubtedly when we put air on the machines, that he would be able to handle one alone, and that he would not miss the loss of his hand very much in that job, after it was arranged for him.

Q. What was done with reference to fixing a machine for him?

A. There was one—

Q. So that he could work?

A. There was nothing particular done to the machines in the big mill.

Q. Was there at the other mill?

A. The other mill was under construction at that time. I knew nothing of it.

A. I understood you to say that the conversation which you have detailed now, as with Mr. Mareen after he had effected the settlement.

A. As far as I know, it was after the settlement; only in—

(Testimony of John F. Bain.)

Q. Did you ever have any other conversation with Mr. Mareen, or with Murch with reference to the fact that Parker had been given a job as long as he wanted it? Did you have such a conversation?

A. I did.

Q. Go ahead and state it.

A. Either Mr. Murch or Mr. Mareen at different times asked me afterwards how Jack was getting along after he had gone to work. I told them that he was getting along fine; as far as I could see, he was doing well, and that we would be able to use him almost anywhere around the mill that a man could get along with one hand. We could use him as a trimmer man on the air machines. We could use him as a sawyer, make a sawyer of him; that he could have an arrangement on his hand that he could use a log turner with; thought it was a very good idea.

Q. Did Mr. Mareen tell you more than once about the settlement?

A. Mr. Mareen spoke to me but once. Mr. Mareen himself spoke to me but once in regard to the settlement.

Q. What did he state about being pleased with the settlement, if anything, that he had made?

A. He impressed me very much that he was greatly pleased with the settlement after Jack had gone to work.

Q. Did you ever have any talk with Murch about the terms of the contract?

A. I had some talk with Mr. Murch.

Testimony of (John F. Bain.)

Mr. GOSS: May it please the Court, I object to the conversation.

COURT: No evidence Murch knew anything about the contract. He didn't make it. If he knew it, it was hearsay.

Q. You said there about that conversation in June of 1907 or 1909. Now, which was it?

A. I believe I said 1907.

Q. 1907?

A. I think it was, but I am mistaken there undoubtedly.

Q. After he had gotten hurt?

A. Yes, I am not positive of that year, but still I would think—

Mr. GOSS: I move to strike out from the testimony of this witness all the conversation with Mr. Murch, or with any one other than Mr. Mareen or the plaintiff, as not responsive to the question, and as incompetent, irrelevant and immaterial.

COURT: I don't remember that he testified to any conversation with Murch about this settlement, but if he did, it isn't competent, and ought not to have been testified, because Murch did not make the settlement.

CROSS EXAMINATION.

Questions by Mr. GOSS:

Now, Mr. Bain, when was it you went into the employ of the Smith Company there?

A. I am quite sure it was in December, 1906.

(Testimony of (John F. Bain.)

Q. And how long did you remain in their employ?

A. I remained in their employment for about four months.

Q. About four months?

A. Yes, at one time.

Q. And then when did you go in again, if at all?

A. I left the company and returned in two weeks later.

Q. Then how long did you stay?

A. Something over 21 months, I think.

Q. All together. Now, this conversation that you had with Mr. Mareen was in June, was it?

A. I am quite sure it was in June.

Q. How do you fix it as being in June?

A. There was other things that occurred about that time of the year that brings to my mind, it was about June.

Q. And that was the only conversation you had—was at that time, was it, with Mr. Mareen?

A. Oh no.

Q. Well, when was the other one?

A. In regard to this particular case?

Q. Yes. That is what I mean, of course, in regard to this Parker case, of course.

A. Yes.

Q. That was the only one you had? You fix that as when Parker first went back to work, was it?

A. When he first went to work after his accident.

Q. Yes, that is what I am getting at. Before he had gone to work, Mr. Mareen spoke about it to you,

(Testimony of John F. Bain.)

or was it after he had gone to work?

A. Spoke to me before and after he had gone to work.

Q. Spoke to you first just before he went to work?

A. Yes, sir.

Q. Then how long after he went to work, when he spoke to you about it?

A. I can't state the exact length of time, but different times when he was around the work.

Q. Do you know when Parker had appendicitis? When he quit?

A. I think I remember distinctly when it was.

Q. That was after that, was it?

A. After his first accident.

Q. That was after he went to work this time?

A. Yes, sir.

Q. That is, he had appendicitis. Then he had to leave for quite a while on account of appendicitis, did he?

A. Yes.

Q. That was after this time that you speak of?

A. Yes.

Witness excused.

PLAINTIFF RESTS.

Mr. GOSS: I wish to move for a non suit, and a dismissal at this time, on the ground that plaintiff has failed to make out a case, in that, in the first instance, he has failed to show that there was any liability or any valid claim in law, as between the plaintiff and de-

(Testimony of A. Mareen.)

fendant company, upon which a settlement could be made, or as a basis of a settlement; that is, that the plaintiff has failed to show that he had any claim against the company whatever, and that this settlement or promise or agreement, or whatever it may be termed, was without consideration upon the part of the company and was voluntary. And for a second reason for non suit, I base it on the ground that the witness has failed to show that there was any agreement, distinct from the written agreement itself, distinct from the voluntary promises made at all times along through here, whereby he was to be continuously employed. And on the third ground, that it is shown by the plaintiff's own evidence, that he voluntarily ceased employment which would terminate any agreement that there might be.

COURT: It will be held in abeyance until the close of the testimony.

A. MAREEN

A witness called on behalf of the defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION.

Questions by Mr. GOSS:

You are the Mr. Mareen that has been spoken of in the testimony here frequently before, are you?

A. Yes, sir.

Q. And you are the manager or superintendent of the C. A. Smith Lumber & Manufacturing Company, the defendant?

(Testimony of A. Mareen.)

A. Yes, sir, general superintendent.

Q. At the time of this occurrence, what office did you hold in the defendant company?

A. General superintendent.

Q. General superintendent. And you are, of course, acquainted with the plaintiff here, Mr. Parker?

A. Yes, sir.

Q. And are you familiar with the incidents that have been brought out here in the testimony at the time this occurred?

A. Yes, sir; quite familiar.

Q. After Mr. Parker was hurt, there, when did you first see him, if you remember?

A. I think it was shortly after he got up.

Q. And where was it, do you remember?

A. It was around the plant, the first time I saw him.

COURT: A little louder, please.

A. Around the plant, down at the plant.

Q. That is, not at the office, but down in the manufacturing part.

A. Not at the office.

Q. What was the subject of your conversation, if any, if you remember?

A. Why, it was in connection with his misfortune and in connection with his dissatisfaction. He brought up his dissatisfaction with Dr. Dix' treatment of the case at that time.

Q. Well, what was said by you at that time? Were any arrangements made, or anything said about—

A. No, not at that time.

(Testimony of A. Mareen.)

Q. Well, did you see him after that?

A. The next time I saw him, I think was at the office.

Q. And what was said at that time?

A. We talked over the case at that time, and he seemed to be more concerned about the way he had been used by Dr. Dix; he felt that the loss of his arm, or his hand, was due to the inefficiency of Dr. Dix, and his inattention during this treatment.

Q. What did you do, or represent to him you would do to settle with him?

A. I represented I would investigate the case, and see how it stodd. I didn't believe that—I thought he must be wrong in his supposition.

Q. Well, was there anything said at that time about his working?

A. Yes, I told him what our general policy was in employing men who were hurt from time to time at the plant; told him we always managed a place for them somewhere. The fact that he had lost his arm wouldn't deprive him of that general policy of ours; that we always give such men steady employment.

Q. And did you give him to understand that you would give him steady employment there in the plant?

A. I gave him to understand that we would do likewise with him, notwithstanding the fact he would only have one hand to work with.

Q. Was anything further said at that time about settlement?

(Testimony of A. Mareen.)

A. I told him I told him as soon as he was able to go to work, that we would give him such work as he could do; as soon as he felt able to be around the plant; and then he told me about his trouble, the doctor's bill, and all those bills coming on, and that he was a poor man, and didn't know what he was going to do about them, and wanted to know if we would—what about Dr. Horsfall's bill. I told him I would think that over, if he would find out how much it was, and then we would talk about that; that I had been away, I didn't know the circumstances of the case, and I wished to look into the matter thoroughly, before going any further or saying much about it.

Q. Then when did you have another conversation with him about it?

A. After—he came in, I think, a few days later than that, or was shortly after that, and told me what the doctor's bill was, the amount of it, and I asked him at that time, I inquired about the calls that he had made, etc., etc., how long he had attended him, and told him I would like to have an itemized bill of the doctor's calls, and what he charged. And he got that itemized bill, and brought it in shortly after that, and in going over that bill, I told him I thought the charge was excessive, that the doctor probably thought the company would pay it, and that he had made charges that weren't in keeping with his usual charges. I told him if he could get the bill reduced to practically half the price, that we would pay it.

Testimony of A. Mareen.)

Q. Well, what was done? What was said in any of these times about employing him, about his work?

A. Well, that was—I don't think there was anything said at that time. There might have been. That was all outlined in my first talk with him.

Q. And what about—go on and finish up what was done about the doctor's bill.

A. About the doctor's bill.?

Q. Yes.

A. Why, when we got the itemized bill, it was less than what his first figures were. He explained that, and I told him what we would pay. I think I told him \$175. If he would cut it to \$175. that we would give him a check for it, and just as soon as he would assure me—he would find out from the doctor, and just as soon as he would assure that the doctor would accept that amount, and give a receipt in full, that we would give him a check for that amount. The doctor accepted it, and we gave the check, and got the receipt in full for his bill.

Q. Now, what was done about that?

A. Which was that?

A. Well, we gave him the check for the bill, and got a receipt in full. With all of our men that are hurt that way, it was been our custom—

Mr. SMITH: That is objected to. That is not competent.

COURT: How much did you pay Horsfall—\$175?

A. \$175.

(Testimony of A. Mareen.)

Q. Did you make any statement to him as to what the custom of the company was, that is, to Parker, with regard to men that were hurt or laid off when injured?

A. Yes, I made—I told him our custom of paying the men half time while they were laid up in the case of accidents.

Q. And did you make any proposition to pay him that?

A. I told him we would do the same by him in that case, and he brought up an item of a drug bill that I think was included. We agreed to pay that.

Q. And how many conversations did you have before the final settlement, as we will call it, or when this paper was signed with him?

A. I couldn't say as to that. We had quite a few along from time to time.

Q. What did you represent to him in this conversation with regard to a job or work?

A. I told him what our custom was, and that we would—that the fact that he had lost his arm, wouldn't deprive him of the same in his case. That we would give him steady work and we would find some place that he could do, some work that he could do.

Q. What did you say to him, if anything, in regard to keeping him employed—how long he could work, or anything of that kind?

A. Just steady work is all I mentioned in that—under those conditions.

Q. Steady work. Now, coming to the time of this

(Testimony of A. Mareen.)

receipt here, do you remember when this was made out? This exhibit that we have in here, this paper here?

A. Yes, I remember that time.

Q. Was that made out the day it is dated, September 25th?

A. Why, I couldn't say as to that. Sometimes the—

Q. It was about that time?

A. It was about that time. These documents are made out after the agreement is made, then the first time a man comes in, it is signed up.

Q. Now, at that time—what conversation at the time that was signed, did you have with Mr. Parker?

A. I don't remember of any special conversation at that time, any more than in connection with signing it. We had it ready. It might have been signed the same day that I had the conversation with him; that is, I had the last conversation, the last talk with him in regard to it.

Q. What was said at that time about his employment, and about working for the company, his job?

A. I don't think there was anything said at that time.

Q. You had discussed that with him before, had you?

A. Had discussed that with him before.

Q. Now, what composed the terms that make up the amount of that statement that was put in there, if you remember?

(Testimony of A. Mareen.)

A. Why, it was the regular half pay. I don't know whether the drug bill was in this amount, or whether that was given—a separate check given for that. I think it was in this amount, included in this account.

Q. And the check was made to Mr. Parker then, was it?

A. What is that?

Q. Was the money paid to Mr. Parker there?

A. I presume it was when he signed this, by our secretary, Mr. Nelson.

Q. Now, Mr. Parker at that time was working for the company, was he?

A. I couldn't say whether he was or not at the time of this settlement.

Q. He had been before that.

A. Whether this settlement was after he came out from his operation.

Q. For appendicitis?

A. Yes, for appendicitis. I am under the impression that he wasn't at work at that time.

Q. That he had just come back from that operation?

A. Yes, I am under that impression.

Q. You knew he did go to work shortly after for the company?

A. Yes, sir.

Q. Did the company keep him employed after that?

(Testimony of A. Mareen.)

A. Yes, as far as I know, he was employed right along after that.

Q. When did you next see him?

A. I saw him about the work at various times.

Q. Converse with him about the work?

A. I was interested in his case, naturally. Had a great deal of sympathy for him, and was anxious for him to be taken care of in a way that he could perform his work under the condition he was in, and still, at the same time, turn out the work in keeping with what was necessary.

Q. At the time Mr. Parker signed that settlement agreement there, did he read it over? Did you read it over to him, do you know?

A. I don't think I read it over to him. I think I showed it to him. I think he read it over.

Q. Mr. Parker has testified to having spoken to you at that time, about there being nothing in there about his employment?

A. I don't remember of any such conversation.

Q. If there had been any such conversation, would you have remembered it?

Mr. SMITH: I object to that if the Court please, That is argumentative, and leading and suggestive, and this is his own witness.

COURT: State what occurred, and what was said, if he remembers.

Q. What was the question?

Mr. GOSS: The question has been ruled out.

(Testimony of A. Mareen.)

Q. Did you say anything to him at that time about his job? About his having that a part of his settlement there, a job, anything to that effect?

A. We might have talked about it, yes. We might have talked about it before this was signed. I don't think we ever had any conversation after it was signed. The matter was closed and thoroughly understood.

Q. After this was closed at that time, did he say anything about Dr. Dix, and whose fault it was that his hand was hurt?

A. No, that was discussed before that.

Q. Well, at any time did you admit it was Dr. Dix' fault his hand was hurt?

A. No, I told him I thought it wasn't Dr. Dix' fault, I thought he must be mistaken.

Q. Had you investigated the matter?

A. I had talked with Dr. Dix, and had it up with him, talked it over, got his ideas of the case, and his treatment of the case.

Mr. SMITH: It is hardly admissible, I think, his talk with Dr. Dix.

COURT: No, that isn't.

Mr. SMITH: I think we will object to that as incompetent. It wasn't in the presence of Mr. Parker, was it?

A. How is that?

Mr. SMITH: Mr. Parker wasn't present when you had it?

A. No. No.

(Testimony of A. Mareen.)

Q. Now, when did you next have a conversation with Mr. Parker about his work or about the matter?

A. That was at my first talk with him at the office that we talked.

Q. That was after he had quit and after the--

A. That was what?

Q. When was that? After he quit?

COURT: When was the next conversation you had with him after he signed this paper?

A. Oh, after he signed that paper. Well, I said around the plant at various times.

Q. But after that, I mean, with regard to his relations with the company, when did he—I will make it plain. When did Mr. Parker, if ever, make any claim to you that the company had agreed to give him a job as long as he wanted it?

A. I don't think he ever mentioned that to me only at the time that he and his mother were talking.

Q. That he and his mother were there?

A. Yes, sir.

Q. That was just before this suit was commenced?

A. Yes, sir.

Q. Now, at the time he and his mother were there, what was said in that conversation in that regard?

A. At that time?

Q. Yes.

A. He came over to see if I wouldn't employ him again, and the most of the conversation was along that line. I gave him the reason why I thought it wouldn't be best.

(Testimony of A. Mareen.)

Q. Well, tell us what was said as near as you can remember, by both of you.

A. I repeated—no, there was a meeting between that, the meeting that I had with him at the time I heard that he had sued the company for his brother's accident. I had a meeting with him at that time by appointment. I had him come over to the office in the evening. That was before this conversation.

Q. That was a meeting, then, between this time and the time he signed the papers?

A. Yes, sir.

Q. Then to state it in a chronological way, what was said at that meeting at the time you sent for him by appointment, at the time he brought the suit?

A. I asked him to drop the suit.

A. Yes.

A. I told him I didn't think the company in any way could be held liable for the accident, and asked him to drop the suit. I told him, says I, "You should know that we couldn't keep you in our employ if you are going to commence suit against us, and it will be the means of you losing your position with us, and it would be a shame under the circumstances." I told him—he said "You don't mean to say you will fire me if I don't drop the suit?" I told him not exactly that, but, says I, "It will be the means of your losing your position." And I appealed to him very strongly for him to drop the suit, and he said it wasn't his fault, that he was chosen administrator of his brother's affairs, and that it was just as much his family, that it

(Testimony of A. Mareen.)

was his family that had brought the suit. He couldn't help it, etc., etc.

Q. And what did you say about the suit? Anything further about it with him? Any conversation about the merits of the suit? Or why you asked him to drop it?

A. That is about all. We only had a short conversation about probably half an hour.

COURT: Talk louder. I don't believe the jurors can hear.

A. It was a short conversation in the evening after working hours, and that is practically all that was said.

Q. Then the next conversation you say, was the one when he and his mother were present?

A. With the exception of this telephone call over the phone where he called me, up and asked me if I had a position for him; that he would like to come over and make arrangements.

Q. And that conversation when his mother was present was subsequent to, and a result of that telephone conversation, was it?

A. Yes, sir.

Q. At that conversation what was said between you and him in regard to the promises of the company, or the consideration of the settlement?

A. He told me of his condition, and that he was unable to get employment. He had a home up there near the mill, and wouldn't be able to sell that and get out whole, and that he would like to go to work, like

(Testimony of A. Mareen.)

to have his position back. I told him I felt he shouldn't go to work for us the way he felt against the company. He felt the company wasn't doing right about it, right with him, and hadn't done right with him, and he had made lots of talk, and I felt it was better for him and better for the company if he would go to work for somebody else.

Q. Was that all that was said? You have heard the deposition of Mrs. Parker here with regard to your saying that you had—the company had promised him work, etc?

A. Yes.

Q. What have you to say in regard to that?

A. He repeated that.

Q. What?

A. He repeated that, and said the company had promised him steady work, and he didn't understand why he wasn't entitled to it.

Q. What did you say with regard to that?

A. I told him—I referred to the arrangements we had with him, told him that I felt we had carried out our agreement fully.

Q. Did you admit that the company had promised him, as a part of this settlement, steady work as long as he wanted it?

A. Just in the way that we had, under those conditions, yes.

Q. What was that way? What conditions?

A. Our usual custom with men to give them steady employment after they had been hurt; finding work that they can do, and looking out for their interests.

(Testimony of A. Mareen.)

Q. Well, did you admit that the company had made an agreement whereby they had bound themselves to give him work as long as he wanted it?

A. Just in that connection, those conditions.

Q. That was it, and did you at that time, then, say that they had agreed to give him work, and then turn around and say you wouldn't do it?

Mr. SMITH: Of course I have no objection to counsel putting in his case. Of course I don't examine a witness the way he does, but I think he is too leading.

COURT: Let him state what he said.

Mr. SMITH: That is all right. We have no objections to stating what he said.

COURT: If you want to call his attention to some special statement Mrs. Parker made, ask him what she said.

Mr. SMITH: We have no objection to anything of that kind.

Q. Well, state fully what was said, and just the words as near as you can, that were used at that time.

A. I talked to Mrs. Parker a good deal along the lines, as a man of experience would talk to the mother of a boy, of a young man, and it was more along that line. I regretted very much the circumstances, and felt keenly interested in the case, felt bad for the man; and my talk with her was along that line. I sympathized with her misfortune on losing the boy, the other boy, and it was a sympathetic conversation. She asked me—said she had a daughter that was a stenographer, and wanted to know if we couldn't find em-

(Testimony of A. Mareen.)

ployment for her. I told her we had nothing at the present time, but I would bear the matter in mind.

Q. How long was this conversation at this time?

A. It was quite a long conversation. I should judge perhaps an hour and a half or two hours they were in the office.

Q. Mrs. Parker in her testimony says that Mr. Mareen admitted that the C. A. Smith Lumber & Manufacturing Company had promised him work. Is that true?

A. That is correct.

Q. You had promised him work?

A. I had promised him work, yes, sir.

Q. She testified that the Smith Company, in the settlement with him that fall—that you said that the Smith Company, or admitted that the Smith Company, in the settlement they made with him on account of his hand, promised him, guaranteed him work.

A. Under the arrangement that I explained to him.

Q. Under the arrangement you explained to him?

A. We promised him work under the conditions that I explained to him at the time of this settlement.

Q. This was a part of this settlement?

A. What is that?

Q. I say as a part of this settlement, you promised him work, as long as he wanted to. That is the gist of her testimony?

A. No.

(Testimony of A. Mareen.)

Q. When was it that you first promised him work, and that he could have it as long as he wanted it?

A. The first time I talked with him in the office.

Q. The first time you talked with him after he was hurt, and you—how often did you repeat that?

Q. What is that?

Q. How often at other times? How many other times did you tell him he could have steady work?

A. I outlined the proposition at that time, and while it might have been referred to at our other meeting, it was taken care of that time.

CROSS EXAMINATION.

Questions by Mr. SMITH:

Mr. Mareen, you said that when you first talked with him, and at the other talks about work that you promised him steady work.

A. I qualified by telling him what we—what our custom was, and that we would give him steady work just the same; that the fact that he had lost his arm wouldn't deprive him of that usual thing with us.

Q. And you made this settlement for—this settlement in this release that is in evidence, before he went back to work steadily, didn't you?

A. Made this settlement?

Q. Yes. A. No.

Q. He wasn't working when this was signed, was he?

A. He had worked before that was signed, and after the first talk I had with him at the office, as I remember it.

(Testimony of A. Mareen.)

Q. And how much is this settlement?

A. How much is it?

Q. Yes. I don't mean in dollars, but I mean in amount of his earning capacity?

A. I don't understand you.

COURT: You said it was half of his wages.

Q. Half regular pay, was it?

COURT: And the doctor's bill and the drug bill?

A. I presume the figures are half his wages.

Q. That is your presumption only?

A. That is my presumption. I didn't figure it out. Had nothing to do with the figuring.

Q. When was it he was hurt?

A. When was it he was hurt?

Q. Yes, sir.

A. Why it was—it was in 1908.

Q. Some time in the month of December, 1908, wasn't it?

A. Along that time.

Q. This is the correct date when he was hurt, the 16th of December, 1908?

A. I couldn't say as to that.

Q. And what day did you make this settlement with him?

A. This settlement with him?

Q. Yes, sir.

A. We talked settlement—

Q. No, I mean what date was this actually signed? This is the correct date, is it?

(Testimony of A. Mareen.)

A. I couldn't say as to that. It might have been—this date might have been put on, and this might have been made out two or three days before he signed it.

Q. Anyway, it was about the 25th of September, 1909?

A. About that date.

Q. And he was hurt December 16, 1908. Now, what was his daily wage?

A. Between that time?

Q. Yes, sir.

A. I think it was \$3.00. I am not sure.

Q. \$3.00 a day?

A. I am not sure.

Q. Now, did you pay him half his wages net to him, or did half his wages include the doctor's bill, and you take the doctor's bill out of his wage and pay it?

A. His settlement—half the wages that were paid is figured half the wages that the party was earning before the accident; the wages we paid him at the time of the accident.

Q. Did you pay that to him net or gross?

A. I don't remember as to those figures, whether they were net or gross.

Q. Now, did you have any men down there at Marshfield that were working for you, who had been injured in the mill, and whom you had kept in your employment at that time?

(Testimony of A. Mareen.)

A. I couldn't state as to that. I think very likely that we did.

Q. But you don't know?

A. I couldn't swear to that, no, sir.

Q. Isn't it true that on this question of what you call your custom, that you told him your custom with the men in the east was to do that?

A. I don't know as to that. I might have told him that, but I think we had men employed around the plant at that time who were injured around the plant.

Q. But you won't swear to it?

A. I won't swear to it, no.

Q. Now, the main office of this company is in St. Paul, isn't it, or in Minnesota?

A. In Minnesota.

Q. C. A. Smith Lumber Company, and they had a big plant back there hadn't they?

A. At that time they had a plant in Minneapolis.

Q. How long had you been running your plant down here at Marshfield when this occurred in 1908?

A. The plant started in May, I think.

Q. May, 1908? A. I think so.

Q. And he was hurt in December?

A. No, he was hurt—

Q. December 16, 1908. I want to be right with you on those dates. Here is your date in here.

A. 1909, isn't it?

Q. No, that is the date of the settlement. I am asking for the date of the injury, December 16, 1908, isn't that the correct date there?

(Testimony of A. Mareen.)

A. That is the date here.

Q. Yes, sir. Now, wasn't your custom this: That when a man was hurt, that you paid him half pay, and took a release in full, and also gave him the job. Suppose they had refused to sign a release, what would you have done? Given him the job anyway or not?

A. We would have given him a job probably, until he commenced suit, if he did commence suit.

Q. Probably. You never had a case of that kind arise, did you?

A. I think we have, yes, sir.

Q. In this country?

A. I am not positive. Probably not before this suit. We have in this country, yes, sir, since then.

Q. Since then, not before?

A. No, I don't think so.

Q. Isn't it true that after he went back to work for you, that his work was satisfactory?

A. Yes, his work was satisfactory, as far as he could do it.

Q. Yes, sir, and--

Q. Under his condition, we realized--

Q. He took care of his work when the mill was cutting 35,000 feet a day?

A. Yes, sir.

Q. And you afterwards increased to what capacity?

A. I think we got up with out mill before it was built over, while he was working there, to 160,000 a day.

Q. And he took care of his work then, didn't he?

(Testimony of A. Mareen.)

A. He did after we fixed over the trimmer, yes, sir.

Q. And you fixed the trimmer especially for him, didn't you?

A. Yes, sir. We fixed the trimmer over after we found he couldn't do his work properly.

Q. And you fixed it so that with one hand he could handle it and do the work fully as well as a man with two hands.

A. We fixed it the same as the other trimmers at the other mill with air lifts, so he could do his work, and do it in keeping with the requirements.

Q. And what was this statement you say you made to him about this suit as administrator for his brother's death?

A. What was the statement?

Q. That you made to him?

A. I called him over one evening, and asked him to drop the suit, asked him if he didn't realize that it would be the means of his losing his position.

Q. What did you mean by that?

A. What did I mean by it?

Q. Yes.

A. I meant that we couldn't conscientiously keep him employed.

Q. Did you mean that you would discharge him if he didn't?

A. That is what he asked me.

Q. Did you mean that yourself?

A. What?

Q. Did you mean that in your statement?

(Testimony of A. Mareen.)

A. I meant at that time when he left to attend the law suit we would put another man in his place, and the place would be taken. That is what I meant at that time.

Q. You didn't tell him if he went to attend the law suit you would put another man in his place?

A. No, told him would be the means.

Q. Didn't tell him when it would be the means?

A. No.

Q. Or anything about it?

A. No. I wanted to give him all the chance in the world to stop the suit.

Q. You knew he didn't have any personal interest in that case? A. What?

Q. You knew he didn't have any personal interest in the case. He was simply administrator.

A. No, I felt he did have a deep interest in it.

Q. You felt what?

A. I felt that he did have a deep interest in it.

Q. I say, not personally. It wasn't he. He didn't sue himself personally?

A. Well, I felt that way, that he was the one that was responsible for the suit.

Q. Didn't you say that he told you that it was not his fault that he was appointed administrator, that the rest of the family had forced it on him?

A. Yes, that is what he told me.

Q. Yes, sir; and there was the mother, and you knew the relation between that dead brother and the mother, didn't you?

(Testimony of A. Mareen.)

A. Yes, sire.

Q. That she was dependant upon him for support, didn't you?

A. No, I didn't know as to that; had no reason to; no reason to know that.

Q. You knew that Parker had a family of his own, didn't you? A. Yes, sire.

Q. How long had you known the brother before he was killed?

A. I don't remember of knowing him at all. I wouldn't recognize his brother. I probably knew him by sight, but I don't think that I was acquainted enough with him to recognize him.

Q. Now, that mill is still running, isn't it, down there?

A. Yes, sire; has been built over and still running.

Q. And there is lots of work there, he is ablv to do, and could do?

A. Same now as then.

Q. Same now as then? A. Yes, sir.

Q. And when he called you up and wanted to go back to work, there was work that he could do, wasn't there?

A. The mill wasn't running at that time, I don't think.

Q. Now, will you kindly answer my question. Wasn't there work there he could do at that time?

A. Not at that mill. Yes, would be work there he could do.

(Testimony of A. Mareen.)

Q. And do it well, satisfactorily. Earn his money, give you value received for his money, couldn't he?

Mr. GOSS: That is all admitted in the pleadings.

Mr. SMITH: No, you claim the mill was shut down.

Q. How many mills did you have?

A. Two. We have three now.

Q. Now, Mr. Mareen, how many times can you recall now, that Mr. Parrker, either by telephone, or by personal application, asked you to take him back to work, after he was discharged, because of his brother's case, and before this present suit was instituted, either the one in Coos County—I will go even further—he sued you once in Coos County and dismissed; that is, in this same matter.

A. I believe so.

Q. And then started this one. Now, then, between the time he was discharged, when he went down to attend to the dead brother's case, and the time he started the case in Coos County, how many times did he apply to you for work?

A. Just that once over the telephone.

Q. And when his mother was there?

A. And then he made an appointment, yes, sir.

Q. He told you his circumstances?

A. Yes, sir.

Q. And the mother told them to you?

A. He told me his circumstances. I don't think his mother did, no.

Q. In his mother's presence?

(Testimony of A. Mareen.)

A. Yes, sir.

Q. And also over the phone?

A. No, he didn't tell me the circumstances over the phone.

Q. When was this that you said Parker told you of his condition, and that he was unable to get employment, and wouldn't be able to sell his home, but would like to go to work?

A. He told me that during the conversation before his mother.

Q. And that was when you told him that you didn't think he should go to work the way things were?

A. Yes, sir.

Q. And all in the world was his brother's case?

A. The way he felt towards the company, I didn't think it was policy to go to work.

Q. How about the way the company felt toward him because he had sued on account of his brother's death? You say this conversation with Mr. Parker and his mother extended over how long a period of time?

A. An hour and a half or two hours, probably.

Q. What else was talked of there besides Mr. Parker's transactions with you?

A. The daughter. The application for the daughter's position.

Q. Mrs. Parker told you then, did she, about her daughter being a stenographer?

A. Yes, sir.

Q. And tried to get work for her? I believe that is all.

(Testimony of A. Mareen.)

QUESTIONS BY THE COURT.

Q. Mr. Mareen, did the plaintiff ever make any claim to the company for damages on account of his injury?

A. I don't think he did.

Q. Did he ever say anything to you that would indicate that he thought he had a claim against the company?

A. He did in this way: He felt that the losing of his—he said he felt the losing of his hand was due to the treatment of Dr. Dix, inefficient treatment, and that the company was—

Q. Responsible for his doctor?

A. It was the company's doctor, and they was liable.

Q. Now, at the time you asked him not to bring an action against the company of account of his brother's death, and intimated to him that if he did, he would probably lose his place with your company, did he say anything to you then about having an agreement with you?

A. No.

Q. By which you were to give him permanent employment?

A. No.

Q. Said nothing about that?

A. Nothing about that.

(Testimony of A. Mareen.)

CROSS EXAMINATION CONTINUED.

Questions by Mr. SMITH:

Q. When he talked to you about Dr. Dix he complained bitterly against him, didn't he?

A. Yes, sir.

Q. And he told you he was inefficient, didn't he?

A. He thought so.

Q. And told you that the company had hired an inefficient doctor, didn't he?

A. No, not just that light.

Q. Just in what light did he put it?

A. He said he felt the company was responsible because of the doctor we employed.

Q. Because the doctor you employed wasn't competent, wasn't that it?

A. What is that?

Q. Because the doctor you employed wasn't competent?

A. He didn't say so.

Q. What did he say?

A. It was the same thing.

Q. It amounted to that, didn't it?

A. Yes, sir.

Q. That he was charging that the doctor that you had furnished him was not a good doctor, was an incompetent doctor. That was it and that was the reason he thought the company was liable to him.

A. That was his talk, yes, sir.

(Testimony of A. Mareen.)

Q. And you had taken a dollar a month from his wages, like you had the other boys down there. What did you take—a dollar or half a dollar?

A. I didn't know that a half dollar had been mentioned.

Q. No. I am asking you. I don't know. What was it? A dollar or half a dollar?

A. A dollar.

Q. For that purpose?

A. A dollar a month.

Q. And that was to be devoted for furnishing surgical aid and attention in case of injury?

A. That went to Dr. Dix for his services.

REDIRECT EXAMINATION.

Q. What was it that he claimed in regard to this, as against the doctor? Was it with regard to the way that he treated him, or to the doctor's ability in general?

A. He claimed that he hadn't attended carefully enough to the case, more than anything else.

Q. Now, you have been questioned in regard to the custom of the company. How long have you been connected with the company?

A. Since 1889.

Q. Since 1889. Were you connected with it first back in Minneapolis?

A. What is that?

Q. You were connected with it back in Minneapolis?

A. Yes, sir.

(Testimony of A. Mareen.)

Q. As an officer of the company, superintendent?

A. Same position.

Q. Then this is the same company that was operating in Minneapolis?

A. I am general superintendent of all the companies under that name.

Q. Now, this trimmer that was fixed over in the mill. You say it was fixed over?

A. I can't hear you.

Q. Put air on the trimmer?

A. Yes.

Q. I don't know as the jury understands what that means. Explain what that means, by putting air on the trimmer.

A. The old way of handling the trimmer is with a lever that you have to pull, pull the saws up. The frame that handles the saw that goes up and down is connected with these levers, if you want to trim off the lumber various lengths, you pull up the saw by pulling or lifting that way; and in putting on the air lifts, the air does the lifting, and by pressing the button, or opening up a manifold valve, it lets the air into the cylinders and lifts up the saw; throw the lever the other way, and it lets it down. One way it takes the power of a pretty good lift of the arm to lift the saw; the other way, just a touch or very slight operation will handle the saw.

Q. And this trimmer that he worked on was, after he had worked on it for awhile, equipped in that manner with air?

(Testimony of A. Mareen.)

A. Yes, he was complaining the work was hard, and we were also getting poor work from the trimmer, due to the increase of the amount the mill was cutting; for these two reasons we made the change.

Q. Are there any other trimmers down there equipped with the air?

A. The ones over at the large mill are equipped with air; what we call the main mill.

Witness excused.

A. L. BUTZ

A witness called on behalf of the defendant, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

Questions by Mr. GOSS:

What is your occupation?

A. Time keeper?

Q. Where?

A. At the C. A. Smith Lumber Company's plant, Marshfield, Oregon.

Q. How long have you been in this position?

A. Since 1910, in this position.

Q. Since 1910?

A. Yes, sir; November.

Q. As such, what do your duties include?

A. Well, make records of the time, make out pay-rolls, fill in the rates, also it has been a report of the accidents, settle accidents, such work as that has been connected with the time office.

Q. Did you have charge of the time of the men worked, etc., ect?

(Testimony of A. L. Butz)

A. Yes, sir.

Q. Kept track of that?

A. Yes, sir.

Q. Are you acquainted with the plaintiff, Mr. Parker?

A. Yes, sir.

Q. How long have you known him?

A. Well, I first knew of him about 1907, I believe, the year that construction was being started, though I wasn't closely acquainted with him at that time; I knew him only by sight.

Q. Were you timekeeper throughout the time he worked for the mill after you went to work there?

A. Yes, he worked in the mill after I was time keeper. He worked in the mill on the east side.

Q. Were you time keeper at the time he was hurt?

A. The first injury?

Q. Yes. A. No.

Q. When did you start in as time keeper.

A. When did I start keeping time?

Q. Yes. A. November, 1910.

Q. November, 1910?

A. Yes, sir.

Q. At that time where was Parker working?

A. He was working on the east side mill.

Q. Working at the east side mill?

A. Yes, sir.

Q. In what capacity?

A. As trimmer man, if I remember correctly.

Q. As trimmer man? A. Yes, sir.

(Testimony of A. L. Butz.)

Q. Do you remember anything about how long he worked there?

A. He started trimming at the time the mill started, and with the exception of one time that he quit, and again that he was off, he stayed there, I believe, until January, 1913.

Q. You say with the exception of one time he quit?

A. Yes, sir.

Q. When was that?

A. That was September, 1911.

Q. And how do you know he quit?

A. Well, he came to me during the middle of the week and asked me if the foreman had said anything to me about raising his wages. I told him no. Well, then, he said, "Have my time ready Saturday night. If he don't raise my wages, I am going to quit." Said he could make more money doing something else.

Q. What did he say he was going to do?

A. He didn't state at that time what he was going to do.

Q. Said that he was going to quit?

A. Said he was going to quit, said he was through Saturday night.

Q. And did he quit at that time, do you know?

A. He didn't come back the next Monday morning, wasn't there that week, and I think something along—I don't know exactly. I think probably ten days he was off.

Q. Did you have any other conversation with him in regard to that?

(Testimony of A. L. Butz.)

A. Not just at that time.

Q. Did you at any other time?

A. Not bearing on the fact that he was going to quit.

Q. Well, did he at the time you made this—did you see him from time to time while he was working there, and at that time he quit that time?

A. I did.

Q. What did he say with reference to his job or contract of his employment?

A. He never mentioned any contract to me.

Q. Now, after he quit that time and came back, did you have any conversation with him?

A. No, I didn't; not regarding his return to work. I don't know what the circumstances were about his return.

Q. You say he was put back to work again there later at that time?

A. Yes, sir.

Q. And that was all the conversation you had with him in regard to that?

A. Regarding his quitting yes.

Q. Or regarding his job?

A. He never mentioned to me that he was promised a job or anything of the kind.

A. Well, you say he quit again later on or took a lay-off later on. When was that?

A. Following, that is?

Q. Yes.

A. That was in December, or January, 1913, I believe, when he quit to go to his brother's trial.

(Testimony of A. L. Butz.)

Q. Did he say anything to you about that?

A. No, he didn't mention it to me at all.

Q. You say he quit to go to the trial?

A. He went to his brother's trial. I couldn't say whether he quit or under what circumstances he went.

Q. You had no conversation with him about that?

A. No, about his brother's trial.

Q. Did you afterwards?

A. Not about his brother's trial.

Q. Well, when next did you see him personally?

A. I saw him frequently, and would pass the time of day as we met. I had an extended conversation with him along the latter part of March at the log dump. I was on my way to the Bay City mill, and he was there.

QUESTIONS BY THE COURT.

Q. When he quit in January, how long was it before he returned?

A. I couldn't say. I don't know what length the trial was.

Q. You say you had a conversation with him in March. Where was he working then?

A. He wasn't working for the company then.

Q. What I want to know is, how long after he quit in January to go, you say, to his brother's trial, was it before he came back to work for the company?

A. He didn't come back to work after his brother's trial.

Q. Oh, didn't come back at all.

Mr. SMITH: He hasn't been able to get back.

(Testimony of A. L. Butz.)

Q. This was some time in March you say?

A. As near as I can place it, yes. I know it was pretty stormy weather.

Q. What were you talking about?

A. He was talking with the man in charge of the log dump about writing an insurance policy for him. We were talking about general conditions, and how he was getting along.

Q. What did he say?

A. Said was making more money than he had ever made before; told me he wrote about six accident policies that day, and was going to write the seventh for the man at the dump; also told me he had written about \$40,000. insurance in Curry County.

Q. \$40,000? A. Yes, sir.

Q. Did he say anything about having quit, or having left the job, or anything about the job?

A. He said he was sorry they took him back, that he was making more money since than he ever had before.

Q. Sorry they took him back?

A. Yes, sir.

Q. I thought they hadn't taken him back?

A. That was the time took him back in December. He expressed the sentiment he would have been ahead if he hadn't had employment at the time. He had had a very lucrative business.

Q. That was September?

A. Yes, sir.

Q. Did he mention September?

(Testimony of A. L. Butz.)

A. No, he didn't mention the month of September, but he said the other time.

Q. The other time he quit?

A. Yes.

Q. Did you have any other conversation subsequent to this?

A. Subsequent to this conversation?

Q. Yes.

A. Not that I recollect.

Q. Do you know what the orders were, or law—orders so that you know in regard to agents and sellers around the plant in working hours?

A. None of them are about the work in working hours; not permitted to be there at all.

CROSS EXAMINATION.

Questions by Mr. SMITH:

Now, when you say he went down to his brother's trial, did you swear awhile ago he wuit to go down there?

A. I don't think so.

Q. Let's have the record then, and see whether he did or not.

COURT: I think he used the word "quit". What he meant, stopped work.

A. He was no longer in the employ of the company after he went to his brother's trial.

Q. That was the same, king of quitting he had before?

A. No, sir.

Q. Not the same kind?

A. No, sir.

(Testimony of A. L. Butz.)

Q. Did you understand it to be the same kind or a different kind?

A. I understood to be different.

Q. You understood to be different?

A. Yes.

Q. And when he went down to his brother's trial there, did you understand he still had a right to come back and work for the company?

A. No, sir. I didn't; I never understood that.

Q. You say that "quit" was before then?

A. I didn't understand he was coming back to the employ of the company after that.

Q. That was a different "quit" from the last time?

A. He didn't quit the last time that I know of.

Q. Now, will you answer the question? You said that he quit twice. When he went down to his brother's trial, did you understand that terminated his employment?

A. No.

Q. You didn't understand that?

A. I was not told that.

Q. Which one of the quits did terminate his employment?

A. That one naturally did.

Q. That one naturally did? A. Yes.

Q. And that was a different one from the other, was it?

A. It was.

Q. When he told you once he quit because his wages were not raised he came back.

(Testimony of A. L. Butz.)

A. Didn't mention to me.

Q. You didn't have to ask the company?

A. No.

Q. Did you strike him from the payroll.

A. I did.

Q. Did you report to the superintendent?

A. Reported to the mill foreman.

Q. Did you report to Mareen, or any one of that kind?

A. I don't know they were there at that time.

COURT: You had nothing to do with that—employing the men?

A. No. Made up the rolls, made up the time books. A man not in the employ of the company I struck his name off the payroll the next month.

Q. Have you your payrolls or books here with you?

A. I have the books here showing the time he quit in September.

Q. Did he quit or lay off?

A. The time he told me he quit.

Q. Get your book. Let's see what it does show.

A. I believe they are in front of Mr. Goss.

Q. (Getting books) Is this kept in your handwriting?

A. My handwriting, but the figures are kept by the mill foreman of the Bay City Mill.

Q. What page do you say tells this time?

A. I think the first page for that month.

Q. All right, turn to it.

A. It is right here.

(Testimony of A. L. Butz.)

Q. How long was he gone?

A. No. 407. He was gone from the 23rd until some time in October.

Q. What time in October?

A. Some time the fore part of the month; I couldn't say what date.

Q. Have you the book here?

A. I have.

Q. When does it show he came back to work?

A. Shows he came back to work the first day of October.

Q. The first day of October? You knew that when you said the fore part a moment ago. That he went back the first of October. You say he quit the 23rd of September, and came back the first of October—is that right?

A. Yes, sir.

Q. He was absent one week?

A. One week.

Q. He frequently took a week off?

A. No, sir.

Q. Didn't he frequently take a week off?

A. Not without the consent of the foreman.

Q. You don't know what he said to the foreman about this.

A. The foreman related to me.

Q. I ask of your own knowledge. Were you present when he had a conversation with the foreman about this?

A. No.

(Testimony of A. L. Butz.)

Q. Now, do you know of your own knowledge, how he got back the first of October?

A. No, sir.

Q. He just came there and went to work, didn't he?

A. As far as I know.

Q. Was there anybody else present at that time in September when you say he told you he was going to quit?

A. No, sir.

Q. Now, about wages; that came up about wages, you say?

A. Yes, sir.

Q. When he started to work, they were running how many thousand feet a day?

A. He was there when the mill first started; cut very low on the start.

Q. What was it.?

A. I couldn't say. I have no charge of it.

Q. Were you there about the mill?

A. I was about the mill usually an hour a day, an hour and a half a day.

Q. In September, 1911, how many feet was he handling a day?

A. Probably handling 30,000 to 50,000, depending on the quality of the log, and the way everything worked.

Q. How many feet were being handled at the mill at that time?

A. The mill?

Q. Yes.

(Testimony of A. L. Butz.)

A. That would be about the amount.

Q. That was the capacity of the mill, was it?

A. Not the capacity, because we gradually worked up, as things ran smoother; the capacity at the start.

Q. From that 30,000 to 50,000 to what capacity did that mill work?

A. I couldn't give you only my judgment. I should say probably 100,000 a day.

Q. And were his wages ever increased?

A. No.

Q. As the capacity of the mill increased. Do you know what the going wage down there was for trimmer work when they had about 100,000 a day.

A. Depended on the quantity of work.

Q. Well, what was it?

A. \$3.00 always a day always has been on that side of the bay.

Q. What was it just the other side of the bay for the same amount?

A. \$3.50.

Q. \$3.50?

A. Yes, sir.

Q. And he was doing as much there as they were across the bay for the \$3.50?

A. No, sir.

Q. What was the difference?

A. About 100,000 feet per day per month.

Q. How much?

A. About 100,000 feet per day per month.

Q. And across the bay?

(Testimony of A. L. Butz.)

A. Across the bay the output was about 400,000 a day with two trimmer men.

Q. And did you hear the statement of the witness Mareen as to what capacity they got up to there?

A. At the east side mill?

Q. Yes.

A. I didn't notice any particular answer.

Witness excused.

F. KESTER.

A witness called on behalf of the defendant, being first duly sworn, testified as follows.

DIRECT EXAMINATION.

Questions by Mr. GOSS:

What is your age?

A. 37.

Q. Where do you reside?

A. Marshfield, Oregon.

Q. What is your occupation?

A. I am now a shortage clerk for the C. A. Smith Lumber Company.

Q. A little louder.

Q. Shortage clerk, C. A. Smith Lumber Company.

Q. Shortage clerk?

A. Yes.

Q. How long have you been employed by the Smith Company?

A. Four years.

(Testimony of F. Kester.)

Q. Are you acquainted with the plaintiff, Mr. Parker?

A. Yes, sir.

Q. When did you first know him?

A. I believe it was in 1910. I believe in May.

Q. When did you say it was?

A. In May 1910.

Q. May, 1910. At what were you employed at that time?

A. The time I met Mr. Parker?

Q. Yes.

A. I first started in helping the construction foreman putting in machinery, moving them.

Q. Was he working there with you then?

A. Well, I believe Mr. Parker was at that time time keeper.

Q. Well, did you at any time while you were working there, work alongside Mr. Parker any place?

A. Yes, after the mill was started, I worked with him. He was trimming, and I was throwing lumber on the trimmer.

Q. Did you at that time have any conversation with him relative to the work, or relative to the jib?

A. Well, I don't exactly remember that we had anything pertaining to the job at that present time on the start, but later on, we did.

Q. When was that?

A. I think it was the time, possibly two weeks before, Mr. Parker quit to get more wages.

(Testimony of F. Kester.)

Q. What did he say? What at that time, if anything?

A. Asked me if I would take his position as foreman if he quit, to see if he could get more money.

Q. He asked you if you would take it?

A. Yes, if I would, and asked me not to take it, in other words.

COURT: Asked you not to take it if he quit?

A. Yes, sir.

Q. Did he give any reason for asking that?

A. Any reason for asking me that?

Q. Yes.

A. Why, he gave the reason that he was going to quit and demand the company to give him more wages, is the way I understood it.

Q. Well, did he give any reason why your not taking the job would help him?

A. Well, he gave—the way I understood it was that I was the only one; I had had some experience in pulling these levers on the trimmer, and as I understood it, I was the only man that they could call on to do that job. If I didn't take it, why, there would be nobody else in the mill, that could, on account of my throwing lumber on the trimmer, I would have more or less experience pulling those levers.

Q. Well, did you have any other conversation after that about his quitting the company?

A. Well, I think the night before he quit; if I remember correctly, was Saturday evening that he quit. I am not positive. I think it was Sauturday evening;

(Testimony of F. Kester.)

two or three days previous to that, he had been asking the foreman, Mr. Rourke, for more wages, and Mr. Rourke hadn't given him a satisfactory answer, so he agreed to give it to him that Saturday evening. I am pretty positive that is how it was. Mr. Parker was to meet me at Marshfield, at the appointed time that evening. I forget the hour, and he was to let me know if he had received his raise or not. I went to Marshfield to meet Mr. Parker, and he sent his brother that has been mentioned here before. Mr. Parker sent him in his place in account of his being sick. He wasn't able to come that evening, so he sent his brother.

Mr. SMITH: We object to that conversation. It is with his brother—his brother is dead.

A. Yes, sir.

COURT: Never mind about the conversation with the brother. If you had a conversation with Mr. Parker about it.

A. No, I was giving the reason why I didn't have a conversation.

Q. We don't care about that. You didn't have a conversation with him.

A. No, sir, he didn't meet me at that appointed time.

Q. Did his brother bring any message from him?

A. Yes, sir.

Q. Was that verbal or how was it?

A. Verbal.

Q. What was it?

(Testimony of F. Kester.)

Mr. SMITH: Object to that as incompetent.

COURT: I don't think you can prove it that way.

Mr. GOSS: Save an exception.

Q. When next did you have a conversation with him about it?

COURT: Haven't you replied that Mr. Parker was at work the next week?

A. The next week?

COURT: After that Saturday?

A. After that Saturday, no, sir.

COURT: He was not at work?

A. No, sir, he was not.

Q. After that, did you have any other conversation with him relative to his job, or relative to this work?

A. You mean after I had—

Q. After this time that he quit?

A. Yes, I did in a week after that, possibly.

Q. A week after that. Where was that?

A. First I saw Mr. Parker, he came over the Sunday morning. That was the Sunday morning after the Saturday evening he promised to meet me, and he told me he was looking for the foreman. I was watchman, at the time at the mill, Sunday watchman. It was Sunday. I directed him where he could find the foreman, Mr. Rourke.

Q. What did he say, if anything, about the work at that time?

A. He said he was going to ask for his position back.

Q. That is what he told you?

(Testimony of F. Kester.)

A. Yes, sir, he did.

Q. Anything else said at that time?

A. No, Wasn't much said. Nothing much more was said, because there was, I suppose at the time, hard feeling at me.

Q. Why? Had you taken his place while he was gone?

A. Yes, sir; that is what my intention was at that time when I met Mr. Parker.

Q. When did you see him again?

A. I think it was Monday morning when he came to work.

Q. He went back to work, and in the meantime, had he been off, you say?

A. Well, I don't know where he had been.

Q. I mean off the job.

A. Oh, yes, yes, sir; while I was holding the job, he was off the job that week.

Q. What was said then, if anything about the job?

A. Between he and I?

Q. Yes, or that you heard him say to any one.

A. Well, I didn't hear him directly say to anybody anything.

Q. Well, when did you have any—did he say anything to you about it?

A. After he came back, you mean?

Q. Yes.

A. Well, yes, he did say quite a lot; blamed me for his not getting the raise.

Q. Blamed you for it?

(Testimony of F. Kester.)

A. Yes.

Mr. SMITH: For what?

COURT: Blamed him for his not getting the raise.

Q. And after that, did you see Parker right along?

A. Yes, sir, I worked on the trimmer putting lumber on.

Q. Well, did you have any disagreement or hard feeling between you and Parker?

A. Well, I always imagined there was some hard feeling on his part, yes. I always imagined he held that against me.

Q. Well, was anything further said at any time to you in regard to his job? A. Yes, sir.

Q. What was it?

A. He accused me of being the cause of the loss of his not getting the raise in salary. That was always the argument he put up to me.

Q. Did he say anything about the job, his wanting the job?

A. Yes, he wanted the job, but he wanted it more at an increased salary.

Q. After that at any time, did he say anything about losing the job, or anything further with reference to his position there—at any time?

A. Yes, quite often.

Q. What did he say?

A. Said that job was worth more money that he was getting.

Q. Well, did he ever approach you with any business proposition in regard to the job?

(Testimony of F. Kester.)

A. Well, at one time, yes, he did.

Q. When was that?

A. He spoke about buying a pool room if he could get a bargain on a pool room, in an off-hand way. I understood it, and took it to mean that way, if I would go with him in the pool room proposition, he didn't care if he lost his position. Several times we mentioned different ways, and he said he didn't care if he did lose. His intention—his intention was to get a cigar stand or pool room, or something; that he was tired of the work; the work was too hard for him.

Q. When was that? While he was working there at the mill?

A. Well, at times during the day that the mill happened to be down for other causes.

Q. I mean, while still employed at the mill?

A. Oh, yes; yes, sir.

Q. Did you have any other conference with him at any time in regard to any other business, anywhere?

A. I can't recall any.

Q. Did he ever speak of going anywhere else to work for the company?

A. For this particular company? Q. Yes.

A. Yes, he told me that he had been offered by the company, a position in Bay Point.

Q. Where is Bay Point?

A. California, somewhere, about Port Costa, in there some particular place. Never been there myself.

(Testimony of F. Kester.)

Q. Well, it is down in California?

A. Yes, sir.

Q. What did he say about that?

A. He said that the company had asked him to go to Bay Point and take charge of their dry kiln, as I remember correctly; it would be an easier place for him; he would have some few men under him, as I understood it he didn't mention the amount, particular amount of men; it would be very east work for him, much easier than the trimmer.

Q. Did he say whether or not he was going to take it?

A. Sir?

Q. What did he say about taking the job?

A. He said he wasn't inclined to take it. He said he wasn't going down, because he had his property here, and didn't care to leave here on that account.

Q. Did he have a conversation with you in regard to his law suit?

A. Well, I often heard him mention suing Dr. Dix, I didn't pay any particular attention; in fact, I hardly can recall.

Q. Did he ever state to you anything with regard to any contract he had with the company for his job?

Mr. SMITH: That is objected to.

A. As to holding his position?

COURT: Did he ever say anything to you about the position of the company—the agreement he had with the company?

A. I never understood he had any agreement.

Testimony of F. Kester.)

COURT: Did he ever say anything to you about it? What did he say about it?

A. I don't believe he ever mentioned to me that he had any contract. I don't know that that was ever mentioned. I can't recall that. That he had ever had any contract. I don't remember that. I am sure he never told me he had a contract.

CROSS EXAMINATION.

Questions by Mr. SMITH:

Now, you say he had ill feeling towards you?

A. I say I presume that. I didn't say he did.

Q. What made you presume it?

A. On account of my taking his position, I understood. He told me—

Q. You took his position did you?

A. Yes, sir, for a week.

Q. One week only?

A. One week and two hours. 62 hours.

Q. And you knew he was simply trying to get a raise in salary. didn't you?

A. Yes, sir, I knew that.

Q. And you knew that he expected to come back to his job?

A. No, I didn't know that he expected to come.

Q. How is that?

A. No, I didn't know that.

Q. What was he asking for a raise in salary for, then?

(Testimony of F. Kester.)

A. I suppose if he got that, he would come back, but if he didn't get it, I didn't suppose he could come.

Q. He didn't tell you anything about he was going to quit if he didn't get a raise, did he?

A. Yes, sir.

Q. How is that?

A. If he didn't get a raise, as I understood it.

Q. Now, did he tell you that?

A. Well, I couldn't say.

Q. Don't you know he expected to get the raise?

A. Yes, sir.

Q. And he expected to come back there at a raised salary, didn't he?

A. He expected.

Q. Then he didn't expect to quit, did he?

A. I don't know that.

Q. Now, then, you say that he had ill feelings against you?

A. I presume that he had ill feeling.

Q. Although you presume he had ill feeling against you, he afterwards, while that ill feeling was existing, asked you to go into business with him—is that true?

A. Yesm he asked me that; he did, yes, sir.

Q. At the same time he had ill feeling against you, is that right?

A. I don't know as he did.

Q. How is that?

A. I suppose he did, yes.

Q. And he wanted to go in partnership with you—although he had ill feelings against you.

(Testimony of F. Kester.)

A. He didn't particularly ask me to go into partnership with him.

Q. What did he ask you about that pool room?

A. He mentioned going into a pool room in this way. He says, "Would you go in with me in a pool room," he says, "in case we get fired", was the way he put it, in different conversations. I don't know sure he mentioned he wanted me as a partner, or anything like that. I don't say he said that, but in an off-hand way, yes, sir, he mentioned that I would take it for granted that is what he meant. Whether financially or how, I don't know.

Q. In case we get fired? A. Yes, sir.

Q. Then he hadn't quit, had he?

A. I suppose not.

Q. Now, he was only gone a week, was he?

A. That is all.

Q. When he came back, who told you to give up your—to give the job back to him, or let him go to work there?

A. The foreman of the mill told me on Sunday Mr. Parker was coming back.

Q. Told you on Sunday; and notwithstanding that, you went to work on Monday?

A. No, I went to work throwing lumber on the trimmer on Monday, and he went up to the levers.

Q. How is that?

A. I was throwing lumber on the trimmer.

Q. Now, isn't it true that it was you who had the ill feelings against him, because he got his job back there?

(Testimony of F. Kester.)

A. No, sir, it was not.

Q. Didn't you shortly after he came back there, and was working at his old job, didn't you tell him then that you would get even with him?

A. Not that I have any recollection of, no, sir.

Q. Did you have any conversation with him along that line?

A. Yes, we talked it over later on, different conversations, but not—I don't know as I ever—I am positive I never made any remark that I would get even with him, because the foreman of the mill came to me, if I was willing to give up my position, he would take Parker back; or if I chose to hold the position. That was Mr. Rourke, the foreman. On Sunday I told him—

Q. Was that in Parker's presence, or not?

A. No, sir; Parker was not there.

Mr. SMITH: We move to strike that volunteered statement out.

COURT: I suppose it is a voluntary statement, but if it explains the fact he didn't have any ill feeling against Mr. Parker.

Mr. SMITH: Very well.

Q. Now, you say Parker blamed you for his not getting the raise?

A. That was my idea, Mr. Parker blamed me for it, yes, sir.

Q. That he didn't get the raise? What did he want with the raise if he had quit?

A. If you would call that quitting.

(Testimony of F. Kester.)

Mr. GOSS: May it please the Court, I object to that form of cross examination.

COURT: If he wuit for the purpose of compelling the company to raise his wages, then it is difficult for me to understand how he can claim it is a violation of the contract to give him employment. They didn't agree to keep him in their employ as long as he lived, and give him an opportunity to quit every week in order to compel them to raise his wages. The question is whether he voluntarily severed the relationship, if it existed at all.

Q. Now, then did you understand when he left there that he had quit for good, or that he was going back?

A. My understanding of it was that if he received more pay, what he asked for, he would come back. If he didn't receive it, that he would not come back. That is it.

Q. He didn't tell you anything of that kind, though?

A. He did previous to that. He said he was going to strike, the words he used. That he was going to strike for more wages. What the meaning of that is, I don't know, as I could exactly understand that myself. I suppose it would mean quitting. I don't know exactly.

Q. When men simply strike for wages, they don't throw up their jobs completely, do they? They simply ask for the raise.

A. Well, I don't know about that, sir. I never struck.

(Testimony of F. Kester.)

Q. Now, when was this you say he spoke about a position being offered him down at Bay Point ?

A. I can't remember exactly when that was. It was the time, I believe, before he struck for more wages, we will call it. I believe it was before that.

Q. Before he wanted more wages?

A. I believe it was, yes. I am positive.

Q. And he told you then he didn't want to go there on account of his home being at Marshfield?

A. Yes, that was the excuse he had, principall.

Q. Now, when Parker came back there and went to work you were throwing lumber on the trimmer, weren't you?

A. Yes, sir.

Q. And didn't he have another man put in your place there?

A. Who?

Q. Mr. Parker. Didn't he have the foreman put another man there instead of you?

A. No, sir.

Q. Well, weren't you removed from there? You quit throwing lumber on his trimmer, didn't you?

A. I quit later on. I got blood poisoning later on.

Q. How many days later?

A. I was working on the trimmer up to the time I got blood poisoning in my hand. Then Mr. Parker objected to my going back on after I got rid of the blood poisoning and came back to work. So the foreman took me away from the job.

Q. That was long before this case started, wasn't it?

A. Which case?

Q. This present case?

A. Oh yes.

(Testimony of F. Kester.)

Q. And because of that did you have any hard feelings towards him?

A. Towards Mr. Parker?

Q. Yes. A. On account of my losing that?

Q. Yes.

A. No, sir, because I was put in—I was put in another job at the same wages. It wasn't material to me whether I worked on the trimmer, or not.

Q. Did you at about that time make a threat to get even with him?

A. Not that I have recollection of, no, sir.

Witness excused.

Adjourned until 9:30 tomorrow morning.

Portland, Ore., Thursday, June 18, 1914, 10 A. M.

Mr. GOSS: I have to say that four of our witnesses, something has happened to them—I don't know what. They didn't get into Roseburg in time to catch the train, and didn't get in in time to catch the night train. I have a telegram from Roseburg that they got in a four o'clock. It embarrasses me to have to ask for any leniency in this case.

COURT: I don't know, Mr. Goss. It seems to me you will have to proceed with the trial of the case. I don't see how we can postpone it until that time. It will take them all day to get down here, if they started in an automobile.

Mr. GOSS: My advices are they should be here for the afternoon session, for they left there by four o'clock in the morning, and the roads are fairly good.

(Testimony of Dr. E. Mingus.)

Dr. E. MINGUS.

A witness called on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Questions by Mr. GOSS:

Q. State your residence

A. Marshfield

Q. How long have you lived there? A. 15 years.

Q. What is your occupation? A. Physician.

Q. How long have you been a practicing physician?

A. 23 years.

Q. Are you acquainted with Dr. George E. Dix?

A. I am

Q. He is the only Dr. Dix there in Marshfield?

A. Yes, sir

Q. Has he been acting as the physician and surgeon for the employes of the C. A. Smith Lumber & Manufacturing Company? A. Yes, sir

Q. How long have you known him?

A. About five or six years

Q. Are you acquainted with his—have you had occasion to know his ability and skill as a physician and surgeon? A. Yes.

Q. What is that? A. Good.

Mr. SMITH: That is not competent in this case, That is not an inquiry here

COURT: I don't think that is a material inquiry in this case

(Testimony of Dr. E. Mingus.)

Mr. SMITH: No, not material in this case at all

Mr. GOSS: I offer to show by this witness that he is a competent physician and surgeon and his reputation in the community in which he lives, his general reputation, is such, and I thought I would show by Mr. Mereen they made inquiries and found he was competent and skillful.

COURT: There is no claim in this case of any liability against the company on account of the doctor. The contention here is that the plaintiff made such claims there of the company, and that claim was adjusted in a certain way. That has been adjusted and whether a valid claim or not, makes no difference.

Mr. GOSS: I wish the record to show this. Our contention, of course, is that wouldn't be a basis of any valid claim against the company, in any event. I understand the evidence is ruled out.

COURT: Yes, I don't think it is competent.

Witness excused.

Mr. GOSS: Under the circumstances, I am compelled to rest.

Defense rests.

JOHN E. PARKER

Recalled in rebuttal.

DIRECT EXAMINATION.

Questions by Mr. SMITH:

You were here yesterday and heard the testimony of Mr. Butz and Mr. Kester? A. Yes sir.

(Testimony of John A. Parker.)

Q. Relative to the time they claimed you quit, about your leaving for that week? A. Yes sir.

Q. Now I want you to speak plainly and distinctly, because it is a little difficult to hear. Do you know what the custom of the company was, how it handled the cases when men quit and severed their relations with the company?

A. When a man quit, he had to give three day's notice to the company that he was going to quit on a certain time, and wanted his money. And that night when he got through, on a certain time, when three days notice, over they gave him his check

Q. Did you ever give three day's notice of that kind? A. No, sir

Q. Did you get the check during that week?

A. I never did

Q. Did you ever quit their service at that time?

A. No sir

Q. I want you to tell the jury all about that. Tell them fully everything that was done. What did you do when you went off that week, and why did you go?

A. Why, I asked them during that week for more money, told them that the job was worth more money, and he said he didn't know, he didn't think would give it to me; said he would see Mr. Mereen

Q. Who said that?

A. Mr. Rourke, and I went to see Rourke Saturday night, and I said, "Mr. Rourke, did you see Mereen or not?" He said, "No, I haven't". I says, "Well, I am going to take a week off, going up on the ranch."

(Testimony of John A. Parker.)

“All right Jack”. So I went off, and during the week I goes down and sees the superintendent, and I says, “Mr. Murch, I am going up on the ranch, and I will be down Monday”. “Well,” he says, “we need you pretty bad, Better go to work now”. “Well,” I says, “I been working pretty hard, a hard job over there, and I am going to take a couple of days off, and come back Monday” He says, “All right”. I came back Monday, and went over to the mill and inquired for Rourke, I found him, and says, “I will be on the job tomorrow morning”. “Well”, he says, “I am awful glad you are here. The yard is full of rip and trim.” The man in there, Felix, he called the name, doing bad work, and getting the yard full of rip and trim. And I come back Monday morning.

Q. Now, did you at any time quit the services of that company of your own volition?

A. I never did.

Q. And do you know about what statement was made to you by Mr. Mereen, or Mr. Murch, one of them, as to whether you would get \$3.50 a day when the mill got to running a certain capacity or something to that effect?

A. That is the understanding I was to get \$3.50 a day.

Objected to as leading

Q. All I want you to do is to tell the conversation you had with him.

A. The conversation I had with Mr. Mereen when I went on the trimmer, he would give me \$3.50 a day

(Testimony of John A. Parker.)

when the mill cut 100,000. He said when the mill got along cutting 125,000 the wages would be the same as it was at the big mill

Q. How much were you cutting at the time you wanted \$3.50

A. About \$160,000.

Q. Do you know about how much the trimmers in the big mill handled a day, a man, a single trimmer?

A. Well, there were two trimmers over there at that time. When a man got—when his machine was fixed like the machine was in the mill I was working in, with levers, they had two men, at least two men to pull the levers, they had two men to pull the levers in each case, and they were getting—one man got \$3.50 one man \$2.50; four men trimming 400,000 feet. I was trimming 160,000 and they were only paying me \$3.00 a day.

Q. Now did you ever tell either Mr. Mereen or Mr. Murch that you had quit? A. No sir

Q. Now, about this alleged quitting. What conversation did you have with Mr. Butz about it, if any?

A. Why I had nothing to say to Butz about quitting. That is the entire time. I never had any conversation with him whatever in regard

Q. Mr. Butz wasn't over you, was he?

A. No sir

Q. He was simply a time keeper?

A. He was just time keeper.

Q. Who had the right down there to hire men or discharge them? A. The foreman.

(Testimony of John A. Parker.)

Q. Did Butz have anything to do with that at all?

A. No sir

Q. Except just keep track of the time?

A. Just time keeper

Q. Now, about Mr. Kester, without asking you a number of questions, you heard his testimony here

A. Yes sir

Q. And I want you to make a full statement about all you remember of your talks with him, if you have had any, and any difficultied that came up between you and him, if any at all. Just tell the whole thing.

A. Well we worked for quite a long time there together. He was throwing the lumber on the trimmer, and on the start, why he was on what they call the long end. There is the front end and the long end. The man that stands on the long end is the man that moves up when the lumber gets shorter. The man on the front end is the man that stays in one place all the time, and he has to place the lumber so there is not too much to head in to waste, as the front end is always down. The lumber has to be trimmed a certain length and all the waste is generally on the far end of the trimmer. He wasn't strong enough for the job; he couldn't do it; but they still insisted on keeping him there—and after—the week I got off, I asked him if he wouldn't take my place for a week, he said he would.

Q. You asked him to take your place?

A. Yes, I asked him, I said, "Will you take my place while off?" "No," he says "I can't handle".

(Testimony of John A. Parker.)

Just like that. Says if in a pinch he would do it and we had different conversation along those lines. And when I come back why, he says, "You laid off, now you come back and take the job", he says, "Well", he says, "I will get even with you" just like that

Q. Did you ever ask him not to take your job?

A. No, I don't know as I did

Q. Now was there any talk between you and him about your taking him into partnership, or going into the pool business?

A. Yes we talked along that

Q. When was that? Before or after this week?

A. Well, I think it happened before.

Q. That was before. Have you any ill feelings against him?

A. Not in the least.

Q. What has been his attitude toward you?

A. Well, I always thought he was looking for a chance to get even, as he called it

Q. He made that statement to you, did he?

A. Yes sir

Q. Now, did you ever blame him for not getting a raise?

A. No sir

Q. Now, he spoke about your telling him that there was a position down in California by this same company. Was there such a position offered you?

A. Yes sir

Q. When was that, before this incident?

A. Oh, that was long before I—before my brother got killed, or before I laid off that week. That is long before that

(Testimony of John A. Parker.)

Q. But it was after you had been hurt, yourself?

A. Oh, yes.

Q. But long before any of this week lay-off came up?

A. Yes sir.

Q. What was that position that you were offered there in California?

A. Well, Mr. Mereen came to me and he says, "Jack," he says, "We want a man down in California". he says, "to look after the dry kilns", and he says, "If you are in shape to take it, I will offer it to you", stating the wages etc., and I told him—I told him the condition things were not; that my wife was sick, my home was right there in Marshfield, I didn't see as I could go.

Q. So you didn't go?

A. I didn't go.

Q. There was no difficulty with the company about it?

A. Oh no, he said that was all right.

Q. Now, what was your pay to be in California, do you know?

A. No, I don't know if he said then at that time or not.

-Q. Now, before you were discharged, that is, before your job was taken from you, did the company tell you in any way that any act that you had done, or were about to take, would cost you your job, or tell you that they would discharge you if you took any steps?

A. No, they didn't state right out that they would.

Q. Did you have any information or knowledge directly, that your handling your brother's case would sever your relations with the company?

(Testimony of John A. Parker.)

A. No sir.

Q. What, if anything, was said to you about that?

A. Why, all there was to it, Mr. Mereen asked me not to bring a case, and I asked him, after we were through talking, I says, "If I should bring this case," I says, "would I lose my job?" Just like that.

Q. What did he tell you?

A. He says, "No, don't know as you would".

Q. He said that he didn't know that you would?

A. Yes sir.

CROSS EXAMINATION.

Questions by Mr. GOSS:

Now you say the custom of the company is, when men quit, to give three day's notice?

A. When a man is going to quit?

Q. Yes. A. He has got to give three days' notice in order to get his money.

Q. In order to get his money. That is the law, of the state, isn't it?

A. I don't know anything about the laws.

Q. And that is the law of the state of Oregon; in order to draw his money right then? A. No sir.

Q. If he don't do that, he waits until the next pay day, is that it?

A. I don't think so. I never heard anything like that down there.

Q. When a man quits any time, if he gives three days' notice he can get his pay at the end of that time;

(Testimony of John A. Parker.)

if he doesn't he has to wait until pay day—isn't that true?

A. Well, I never knew of anything like that.

Q. Never knew that? Did you think if you didn't give three days' notice, you lost your pay altogether?

A. Well, Mr. Goss, I kept time there for a number of months. Nothing like that ever happened. If a man quit, he got his money; if he gave three days' notice.

Q. The company, as a matter of fact, always gave them their money when they quit, unless there was some good reason for not doing it, didn't they?

A. That is something I don't know anything about. I always—when a man came there and says, "Jack, I am going to quit Saturday night, this is Wednesday", when the time came, he would get his money.

Q. As a matter of fact, anybody who wanted to quit, didn't lose his money by not giving three days' notice, did he?

A. That was my look-out, to go and deliver the check to him.

Q. It was your look-out, but as a matter of fact, my question is, he didn't lose his money by not giving three days' notice?

A. No, he didn't lose his money, no sir.

Q. As a matter of fact, didn't you tell Mr. Rourke that you were going to have \$3.50 a day for that work, or you would quit?

A. I don't remember ever telling him that.

Q. You don't remember doing that.

(Testimony of John A. Parker.)

A. No sir.

Q. And didn't you go to the other men on the trimmer job around there, to any man you thought capable of that job, and tell them that you were going to quit, and have it fixed up if they didn't take your job you would get \$3.50? A. No sir.

Q. Not to any of them.? A. No sir.

Q. Didn't you tell Fred Moore you had fixed it up that way? A. No sir.

Q. And you had the company where they had to do it? A. No sir.

Q. Or anything to that effect? Didn't you tell Ben Matson, the yard foreman, didn't you ask him, or tell him after—at this time, when you laid off there as you call it, and he says you quit, that if the company didn't give you back your job that you were going to prosecute them for that kind of cars they were running there? A. No sir.

Q. Didn't have any similar conversation at all to that with Mr. Matson. A. No sir.

Q. And didn't you go to Mr. Dresser, foreman of the big mill, on the other side, and told him you had bunched in on the other side, meaning you had quit, and asked him got a position there? A. No sir.

Q. You didn't? You didn't tell Mr. Rourke at all that you had quit, or that you would quit unless you got better pay?

A. I don't remember.

Q. You don't remember. Now, you say when you called—when Mr. Mereen called you over after this—

(Testimony of John A. Parker.)

after you started this trial, that he told you you wouldn't lose your job? Is that what he said?

A. Yes sir, he didn't say I would, and didn't say I wouldn't.

Q. What?

A. He didn't say I would, and didn't say I wouldn't.

Q. Didn't he say it might be the means of your losing your job or that it would be the means of your losing your job?

A. He didn't say one thing or the other. When I left I asked Mr. Mereen, "If I bring this case, does that mean I lose my job?" And he says, "No, I don't know". Something like that.

Q. Yes, but didn't he say it would probably be the means of your losing it?

A. That is just the way he said it, the way I am telling you now.

Q. Yes, but I am asking you if he didn't say that it would be the means of your losing your job?

A. That is what he said. When I got to the door, I asked particularly, I asked, "Mr. Mereen, does this mean, if I bring this case, do I lose my job?" And he said, "I don't know as it does mean that you will lose your job".

Q. He said he didn't know as it did, but didn't he tell you before in the conversation you had there, it would be the means of your losing your job? That is what I asked several times.

A. I don't know as he did.

(Testimony of John A. Parker.)

Q. You don't know as he did? How long was this conversation?

A. Probably half an hour, three quarters of an hour.

Q. Well what was said in this conversation, what else?

A. Oh, we just talked about my brother getting killed, and how it happened, and all about it.

Q. Just what did he say about it? Let's see what else there was.

A. Well I couldn't remember the words, but it was along the lines that he was sorry it happened, and said the wood was put there—didn't know how the wood happened to be there, etc., you know.

Q. Didn't know how it happened to be there?

A. Said the wood was put there by the Smith company. Tom didn't have to move it, etc. He didn't know as the Smith company was to blame, he thought Tom was to blame.

Q. And he didn't think the Smith company was to blame at all in the matter.

A. That is what he thought.

Q. How did this case against the company turn out?

A. How did this case against the company turn out?

Q. Yes. A. Why—

Mr. SMITH: We will admit that to save the record, the verdict in the case was for the defendant,

(Testimony of John A. Parker.)

both of them, and it was sustained in the supreme court, and the appeal for a rehearing denied.

Q. When you went back to work on the trimmer there, you didn't start in Monday morning, did you, the first thing, with the work? A. Yes sir.

Q. Didn't you go in a few hours after the work was started?

A. No sir.

Q. Didn't Felix trim a couple of hours, and then you start?

A. No sir.

Q. You are sure of that?

A. The first morning after I got back from the trial?

Q. Yes. A. I started right away at seven o'clock.

Q. You went to see Mr. Rourke about that, Sunday, did you, about going back to work?

A. I saw him Sunday, and told him I would be back on the job Monday morning.

Mr. SMITH: That is when he said he was glad of it? A. Yes sir.

Witness excused.

JOHN F. BAIN.

Recalled by the plaintiff in rebuttal.

DIRECT EXAMINATION.

Questions by Mr. SMITH:

Mr. Bain, you were sworn yesterday I believe.

A. Yes sir.

(Testimony of John F. Bain.)

Q. How long did you work there at the mill?

A. I worked at the mill two different times; one time about four months, and another time about twenty-one months.

Q. During that time did you become acquainted with, and did you know what the custom of the mill was about giving money to the men or paying them when the mill has men who quit? A. Yes.

Mr. GOSS: Do you know about that? Did you have anything to do with the pay?

A. How is that?

Mr. GOSS: Did you have anything to do with paying the men?

A. I had nothing to do with paying the men more than to see that they got their money.

Mr. GOSS: You didn't keep their time?

A. I kept my men's time.

Mr. GOSS: And you delivered the checks to them?

A. Yes sir.

Mr. GOSS: You gave them the checks?

A. Not at all times, but generally speaking I gave them the checks, men that was working under me.

Q. Now then, it is that way, that you got acquainted with this custom about paying the men that quit, was it? A. Yes sir.

Q. Now then, will you tell the jury in your own way what that was, and explain all about that pay business.

A. The custom of the company, and the instructions to me was if a man wanted to quit his job, it

(Testimony of John F. Bain.)

was necessary for him to give me, the men that were working under me direct, it was necessary for them to give me three days notice that they wanted to quit in order to have a men put in their place. I would—when I received the notice from the men, I would usually turn it in to the time keeper, telling him that a certain man wanted to quit at a certain time, and on that certain time that the men wanted to quit, the time keeper would usually hand me his check, and I would deliver to the man at the quitting time, or thereabouts on the evening that he wanted to quit.

Q. So they did not just pick up their hats and walk off? A. No.

Q. In order to quit. About how many days' time did they usually give notice there?

A. The rule was that they were to give us three days' notice.

Q. And do you recall now—well, what is your recollection as to whether that rule was followed in at least a large majority of the cases, if not all? I remember distinctly that I got several callings from the other officials for not giving the three days' notice. At times I would overrule that and help the man to get his check if I could at any time.

Q. The custom was generally followed, was it?

A. Yes sir.

Mr. GOSS: That is leading.

(Testimony of John F. Bain.)

CROSS EXAMINATION

Questions by Mr. GOSS:

If a man wanted to get his pay right then, under the state law, he had to give three days' notice before he quit, didn't he? A. No sir.

Q. He didn't? A. No.

Q. Could he get it without that?

A. If he was a good bluffer he would get it.

Q. He would get it anyway? A. Yes, sir.

Q. Wasn't it the state law that he had to give three days' notice. A. No, it was not.

Q. It was not?

A. We were speaking of the custom of the company

Q. I am not speaking of customs at all. I am asking if it is not the law of the state.

Mr. SMITH: That is immaterial as far as this witness is concerned.

COURT: You can ask him. He seems to be very positive about the matter.

Q. He knows all about it. What did you say in regard to that? Isn't that the state law, and wasn't it then?

A. I say it was not.

Q. You say it was not? A. Yes sir.

Q. But it was the custom of the company to require three days' notice in order to give the man his pay?

A. It was.

Q. But in instances they would give the man his pay right off, would they? A. Yes, we did.

(Testimony of John F. Bain,)

Q. And you didn't go and hunt a man up and give him his pay, if a man gave notice, and was there at the time, you gave him the check. If the man quit, and wasn't there then you did not hunt him up and give him the check? A. I did, in my case.

Q. You did in your case? A. Yes.

Q. If the man wasn't anywhere around the job, you would go and hunt him up?

A. Oh no, he was naturally supposed to be on the job.

Q. If a man quit, and wasn't there at that time, he had to go to the office to get his pay?

A. After his three days' notice, his check was invariably handed to him.

Q. Yes, if he gave three days' notice, they gave you a check. And if the man came for it, and was there on the job, you gave it to him? A. Yes.

Q. And if he wasn't, you didn't? A. No.

Q. And if he quit without giving you three days' notice the check wasn't given him?

A. Only in some instances.

Q. Yes, only in some instances. You were in the big mill on the—we will call it—the other mill, not the one Parker worked in?

A. I was in the mill Parker was working in at the time we were speaking of.

Q. When you were there. That isn't the mill they spoke about at the time he quit. That is the Eastside Mill? A. No.

Witness excused.

Plaintiff rests.

(Testimony of A. Mareen.)

A. MEREEN.

Recalled by the defendant in rebuttal.

DIRECT EXAMINATION.

Questions by Mr. GOSS:

There has been some testimony here in regard to the custom of the company when men quit. What was the procedure followed there about men quitting and receiving their pay?

A. There is a state law that regulated that,—required the men to give three days' notice, and when they give that three days' notice, we have to pay them at the end of that three days when they quit. Otherwise, why, we would pay them at the regular pay day, the first regular pay day of the company. That is regulated by the state law.

COURT: If a man quit without giving three days' notice, he didn't lose that pay, but he had to wait until your regular pay day for it?

A. He had to wait out regular pay day for it.

Witness excused.

A. L. BUTZ.

Recalled by the defense in rebuttal.

DIRECT EXAMINATION.

Questions by Mr. GOSS:

You weren't working for the company at any time when Mr. Bain was, were you. A. Yes, sir.

(Testimony of A. L. Butz.)

Q. When did Mr. Bain leave the company?

A. I couldn't tell the date, because at that time I wasn't in the time office, but I believe it was some time in the early part of the summer. But as to what year it was, I don't recall.

Q. Well, it was long before this time Mr. Parker quit, was it?

A. Mr. Parker quit at Bay City?

Q. Yes. A. Yes sir.

Q. Now, with regard to his quitting, have you there the time back at that date?

A. For the Eastside Mill, yes sir.

Q. For the Eastside Mill—that was where he worked? A. Yes sir.

Q. Now, his name is in there in your handwriting, is it? A. Yes sir.

Q. Now, I will introduce this page, of the time book, with Mr. Parker's name on it, and the number 407, being the line it is on. I don't know what page in this book, not numbered, but the time book for the Eastside Mill for the month of September.

A. These sheets are—There are other months that follow, and previous to that it is all alternate months while one book is being figured up, they have another book to keep time on.

Q. This would be September and November, would it? A. September and November.

Mr. GOSS: I will offer these in evidence.

Mr. SMITH: We have no objection to that. These records were kept by you, were they?

(Testimony of A. L. Butz.)

A. The records of the time?

Mr. SMITH: Yes.

A. They were kept by the foreman and myself in conjunction.

Book marked "Defendant's Exhibit B".

Q. Now I notice that starting on the 24th that there is an X mark in each column there.

A. Yes sir.

Q. 24, 25, and 26. What does that X mark indicate? A. Absent.

Q. Now right after that, I notice here "time" is written. What does that mean.

A. Means that he has quit, and wasn't supposed to be coming back. You will find it in other men the same way, who have quit previously to that time.

Q. Have you the time book for the next month?

A. Yes sir.

Q. Month of October. I notice the same number and the same line here. A. Yes.

Q. 407, Jack Parker. Is that your handwriting?

A. Yes sir.

Q. And I notice there is a line drawn through that?

A. Yes sir.

Q. Did you do that?

A. Also the name above, you will notice.

Q. If you had the time—having quit in the month before, how does he come to appear in this month?

A. That time book was written up before the foreman told me absolutely that he wasn't coming back, although he had told me himself previously.

(Testimony of A. L. Butz.)

Q. Who had told you himself previously?

A. Mr. Parker.

Q. Oh, you get this up quite a time beforehand?

A. I made it up about four days before the first of the month, in order to get my work along.

Q. How do you make that up—copying the other one?

A. The October book is made up by copying off the September payroll, and if a man quits after I have written that up, his name is copied on that book, but I generally make a point before the book is delivered to the foreman, to take the name off there with ink eradicator, or drawing a line through it.

Q. You do that by drawing a line through it, as you did in this case?

A. Draw a line through it.

Q. I see he went to work there, and worked right along that month?

A. Yes, he came back on Monday morning, and proceeded to work. By what arrangement, I don't know.

Mr. GOSS: I offer this in evidence.

Mr. SMITH: Go right ahead.

Marked "Defendant's Exhibit C".

Mr. SMITH: If you wish Mr. Goss, so it won't interfere with your record, we will agree that you may dictate such parts as you wish in the record after we get through.

(Testimony of F. Kester.)

Mr. GOSS: It is understood by counsel that we may dictate in the record such parts as we wish, and withdraw the book.

Q. Mr. Butz, you were explaining that Mr. Parker—

Mr. SMITH: Excuse me, let, him tell what he wants to testify.

Mr. GOSS: I am not going to put anything in his mouth.

Q. That Mr. Parker spoke to you with regard to this himself.

Mr. SMITH: That was gone into yesterday, if the Court please. This is not surrebuttal.

COURT: He testified to that yesterday, about Parker telling him he was going to quit.

Mr. GOSS: All right, that is all.

Witness excused.

F. KESTER.

A witness called in rebuttal by the defendant.

DIRECT EXAMINATION.

Questions by Mr. GOSS:

You have heard Mr. Parker's testimony here that he just gave this morning, in regard to your asking him about this job, etc. etc. Will you state the facts with regard to that?

Mr. SMITH: That is objected to, he went into that yesterday.

(Testimony of F. Kester.)

COURT: Just ask whether he made the statement Parker testified to. He testified fully yesterday as to this work, and what Parker's was. No need to go into that again.

Mr. GOSS: Mr. Parker, as I understand, has added something to this.

COURT: Ask him about the particular thing Parker testified to. Don't go over the whole thing.

Q. Mr. Parker testified you asked him about taking that job if you thought you could fill it. Was there any such conversation?

A. Mr. Parker never asked me to take his job, no sir, he asked me not to take his job.

Witness excused.

Mr. GOSS: May it please the Court, I wish it to appear in the record, on this application for delay, that the witnesses I am waiting for are Mr. Dresser, Mr. Matson, and Mr. Rourke, and I presume it is proper at this time to make a motion for a directed verdict in this case.

COURT: Very well, you can have the record show that. I think there is testimony enough to go to the jury.

(Deposition of Catharine B. Parker.)

*In the Circuit Court of the State of Oregon for the County
of Coos.*

JOHN A. PARKER,

Plaintiff.

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,

Defendant.

Deposition of Catherine B. Parker.

On the 13th day of September, 1913, at suite 307, Coke Building, Marshfield, Oregon, at ten o'clock, A. M. appeared the plaintiff by his attorney Wm. T. Stoll, and the defendant by its attorney John D. Goss, and also appeared Catherine B. Parker, the witness named and mentioned in the annexed notice. Now comes John D. Goss, on behalf of the defendant, and objects to this hearing or the taking of this deposition at this time and place, on the ground that the same is not properly noticed; that the witness is not about to leave the jurisdiction or the county, and that her presence could be readily procured at the trial of this cause, and that the order herein is not based upon a proper showing to allow the taking of this deposition at this time and place. Thereupon the parties proceeded to take the testimony of said witness, pursuant to the annexed notice, and the said Catherine B. Parker, being by me first duly sworn, to testify the

(Deposition of Catharine B. Parker.)

truth, the whole truth, and nothing but the truth, testified as follows:

By Mr. STOLL:

Q. State your name, age, and residence.

A. Catherine B. Parker, 58, Nova Scotia, in the Dominion of Canada.

Q. What relation, if any, do you bear the plaintiff?

A. Of course I am his mother.

Q. Do you intend to leave the county, and if so, when?

A. I intend to return to my home within a week, possible not for two weeks.

Q. Were you present on August 17th or 18th, 1913, at the office of the C. A. Smith Lumber & Manufacturing Co. at Marshfield, Oregon, at a conversation between Arno Mereen, the vice-president of the C. A. Smith Lumber & Manufacturing Company and John A. Parker, the plaintiff in this case, you three and no other persons being present, at which a contract of employment entered into by the C. A. Smith Lumber & Manufacturing Company, on the one side, and John A. Parker, the plaintiff on the other side, for services in settlement of damages sustained by Parker, was discussed?

Mr. GOSS: Objected to on the ground that it is incompetent, irrelevant, and immaterial; that it is unnecessarily leading, even for an impeaching question. that it pre-supposes matters not proved, and which are the basis of this action; that it is intended as the foundation for impeaching questions and evidence, and that

(Deposition of Catharine B. Parker.)

as such it is improper in that it does not properly identify the conversation referred to, nor comply with the statutory requirements for such a question.

A. I was present at such conversation.

Q. State what was said at that time.

Mr. GOSS: Same objection.

Q. As to my recollection, the substance was concerning the employment of Parker. Mr. Mereen admitted that he had promised him employment on account of the damages to his hand.

Q. What was said by Mr. Mereen, if anything, as to the length of time Mr. Parker was to be employed?

Mr. GOSS: Same objection.

A. I understood while the mill was running.

Q. Was there a dispute between them as to the length of time that Mr. Parker was to be employed, and if so what was said on that subject?

Mr. GOSS: Same objection, and the further objection that it calls for a conclusion of the witness, and is leading.

A. Parker said, Mr. Mereen, you promised me work as long as I lived. Mereen said, As long as there was work. Well, Parker said, As long as I wanted it.

Q. What did Mr. Mereen say to that?

A. Mereen said, As long as you wanted it.

Q. Was anything said, and if so what as to the cause of Mr. Parker's being discharged?

Mr. GOSS: Same objection.

A. On account of the law suit, of the death of his brother.

(Deposition of Catharine B. Parker.)

Q. Who stated that to be the cause?

A. Mr. Mereen stated that.

Q. Was anything said at that conversation about whether or not Mr. Parker had performed his work satisfactorily and properly?

Mr. GOSS: Same objection.

A. At different times Mr. Mereen said that everything was satisfactory with Mr. Parker from the time he started to work for the company until he was discharged. His work was entirely satisfactory.

Q. When do you intend to leave this county, Mrs. Parker?

A. Well I may be called any day. It is necessary for me to get home. I must leave the first week in October, anyway.

Q. What are your present intentions of going away from here?

A. My present intention is going away.

Q. When? A. I am liable to go any day.

Q. You are liable to go any day?

A. Yes, my business calls me home.

Mr. GOSS: I object to that as leading.

Q. Where do you intend to go when you leave here?

A. Well, I intend to call at Washington for a few days, and from there to my home at Amherst, Nova Scotia.

CROSS EXAMINED BY MR. GOSS.

Q. How many times did you see or talk with Mr. Mereen?

A. That is the first time I ever met Mr. Mereen.

Q. That is the only time you ever talked with him?

(Deposition of Catharine B. Parker.)

A. To my recollection, yes.

Q. How long did you talk with him at that time?

A. I could not tell you exactly. I think a couple of hours.

Q. And the conversation was practically all of it between Mr. Parker and Mr. Mereen, was it?

A. Yes, excepting what few words I spoke to Mr. Mereen myself, relating to the trial.

Q. How much conversation did you personally have with Mr. Mereen?

A. I could not tell you how much I had. We conversed a few words on the subject of the trial.

Q. Then practically all the conversation was between Mr. Parker and Mr. Mereen.

A. Concerning the employment and business it was. Of course, Mr. Mereen and I talked also.

Q. How much of those two hours was occupied in a discussion relative to the employment of Mr. Parker?

A. I could not tell you. The boy pleaded so hard to be allowed to go to work. He was up against hard times, and he had to go to work at something. Mr. Mereen, he said, if you will even promise me work in two months, I will try and put up some kind of a building on my land.

By Mr. STOLL, continuing direct examination with consent:

Q. With reference to the conversation that you testified to in your direct examination, who was present?

A. Mr. Mereen, Parker, and myself.

Q. Where did that conversation occur?

(Deposition of Catharine B. Parker.)

A. Right in the office where I met Mr. Mereen.

Q. At the office, what office do you mean?

A. In the Smith building, Mr. Mereen's office, I presume.

Q. And when did this conversation occur, at what time?

A. I could not swear to that.

Q. What month was it, state approximately when it was.

A. I could not tell.

Q. When did you come here?

A. It must have been on the 27th of July, I came here.

Q. How long after you came here did it occur?

A. I would not like to swear to as what time that was. I believe it must have been near the latter part of August or the first week in September. The first thing that attracted my attention was a piece in the paper about the law suit.

CROSS EXAMINATION CONTINUED BY
MR. GOSS.

Q. You say that the first thing that attracted your attention was a piece in the paper about a law suit?

A. Yes, that was going to be brought by Parker against the Smith company.

Q. About this job?

A. Concerning the settlement that he had made, and they had not fulfilled their contract or something to that effect.

(Deposition of Catharine B. Parker.)

Q. That was in the Times here, was it not. The Coos Bay Times?

A. It was in the paper they took at the house. Yes, it was the Times.

Q. Now, what, if any reason did Mr. Mereen give for not employing Mr. Parker.

A. On account of the law suit that he was bringing on account of the negligence of the company leaving some wood in the street, which caused his brother's death. He tried to collect damages and to prevent other people from the same accident.

Q. This is what Mr. Mereen gave as the reason for not employing him?

A. Through the conversation, that was what I understood.

Q. Did Mr. Parker state to Mr. Mereen that he had a position and that he could work, or was he asking Mr. Mereen for a position?

A. Yes, he asked him to be allowed to go to work.

Q. Did Mr. Parker claim to Mr. Mereen that he had a contract with Mr. Mereen, with the C. A. Smith Lumber & Manufacturing Company, whereby he was guaranteed work?

A. Yes he claimed he had.

Q. That was all he admitted, was it?

A. Yes, he promised him work.

Q. He didn't admit any contract whereby he had agreed and guaranteed to give him work, did he?

A. Yes, Mr. Mereen admitted that the C. A. Smith Lumber Company had promised him work.

(Deposition of Catharine B. Parker.)

Q. Had promised him work. Is that all he admitted?

A. That was agreed under the settlement.

Q. Did he admit that they had made a settlement, and that that was a part of the settlement whereby he guaranteed him work? Did he use the word guaranteed?

A. Well, I wouldn't swear that he used that word, but he promised him work, and that the Smith company in the settlement they made with him on account of his hand promised him that.

Q. Did Mr. Mereen say that he had promised him work at that time? At the time of the settlement he promised him work.

Q. At the time of the settlement, he promised him work? Did he say that?

A. Well, he promised him work on the contract of settlement.

Q. Did Mr. Mereen say that in your presence?

A. Yes.

Q. He said as a part of that contract that he agreed and promised to give him work?

A. Yes, he promised him work as long as the mill was running—as long as Parker wanted it—as long as the mill stood.

Q. As long as the mill stood? As long as he wanted it? A. Yes.

Q. You say Mr. Mereen at that time admitted and said that he promised him work as long as he wanted it, and that it was part of the settlement?

(Deposition of Catharine B. Parker.)

A. That was it.

Q. Well, did he say that?

A. Yes, he promised him work as long as he wanted it, and as I understood it, it was a part of the settlement and contract.

Q. Well, was that one settlement that was brought up in that conversation some settlement that occurred at once particular time?

A. He promised him work at that settlement.

Q. Yes, but do you say that that was one settlement?

A. I don't know.

Q. Did you understand from that conversation that that settlement had been made all at once on one particular day? A. Yes sir.

Q. Oh, you did, well, I am asking whether that settlement or agreement or promise or whatever took place, all took place at once that is, that Mr. Mereen and Mr. Parker made this agreement at one time and one place, or was it the result of numerous negotiations and conversations relative to that matter?

A. All I know about it, is what I heard that day.

Q. I am trying to find out what you heard that day.

A. I told you that.

Q. Well, as a part of what you heard, I want to know if what you heard at that time was that Mr. Parker and Mr. Mereen had made a settlement at once particular day, at which time this promise of work was made, or whether it was a settlement that had been made at different times, or if they had discussed it for a considerable period of time?

(Deposition of Catharine B. Parker.)

A. That subject didn't come up.

Q. Did Mr. Parker say anything about his having signed a release or a paper, a receipt settling that matter?

A. I didn't know anything about it.

Q. Did Mr. Mereen mention anything about it?

A. No.

Q. Did Mr. Parker mention anything about any money he received in that settlement?

A. I never knew there was any money.

Q. Mr. Parker never told you he had received any money?

A. The subject never came up.

Q. And Mr. Mereen didn't mention it at that time?

A. No.

Q. You had talked this matter over with Mr. Parker before this meeting had you not?

A. No, nothing that amounted to anything.

Q. Hadn't you heard of his settlement before that time?

A. Nothing in particular. I didn't know what settlement he had made.

Q. He never wrote you or told you of the settlement? A. No.

Q. You didn't know Mr. Mereen before, did you?

A. No I never met him before.

Q. Mr. Parker asked you to go there with him did he not?

A. No. I have a daughter who is a stenographer, and wanted to get her a job, and I asked Mr. Mereen

(Deposition of Catharine B. Parker.)

while I was there if there was a chance for her to get a job. That is what I went over for.

Q. Did he go for that purpose.

A. I couldn't tell you.

Q. Was there anything said in that conversation by Mr. Parker or Mr. Mereen that showed whether or not there had been previous conversations between Mr. Parker and Mr. Mereen with reference to Mr. Parker going back to work?

A. Well, from what I could judge I wouldn't know but that was the first time that he went right to Mereen and asked him definitely. I couldn't tell you. There was nothing said at that time relating to him asking to go back to work. He may have, I don't know. It is hard to remember conversations. If I had known that I would have been called up to remember it, I would have paid more attention to it. I did not know I was going to be cross examined on an ordinary conversation.

INSTRUCTIONS.

R. B. BEAN:

Gentlemen of the Jury, This action is brought by the plaintiff against the C. A. Smith Lumber Company to recover damages for breach of an alleged contract between the plaintiff and the defendant, by the terms of which, the defendant was to give the plaintiff employment in its mill as long as he wanted it. It appears from the pleadings and the testimony that in December, 1908, plaintiff was injured while working for the defendant company, and it is claimed by him, that as a result of such injury, he made a claim to the company for compensation, and that such claim was settled and adjusted by the company paying him a certain sum of money, and agreeing to give him employment as long as he wanted it, and that thereafter, he entered into its employment in pursuance of this agreement, and continued until January, 1913, when he was discharged, and for this, he claims damages in this case.

Now, at the outset, it is important to understand that this is not an action to recover damages for the injury that the plaintiff received, as it is not the province of this court, or the jury in this case to undertake to adjust or settle that matter. It is important, however, for the plaintiff to show that there was a claim made by him to the company for compensation on account of that injury, and that that claim was settled and adjusted by the payment of a certain sum of

money, and the agreement on the part of the company, as a part of the contract of settlement that he should be employed as long as he wanted employment, and to that extent, and to that extent only, the injury he received becomes important in this case. In other words, it is only necessary for the plaintiff to show a consideration for the contract, if there was one made, upon which he relies for recovery; and the considerations for such contract, from his standpoint, is that he had a claim, and was making one against the company for compensation, and that claim was settled by this agreement. So that the first question for you to determine in the case is whether there was such a contract or not, whether the company ever agreed as a part of its settlement with the plaintiff for a claim made by him for compensation on account of his injury, that it would give him employment as long as he wanted it. If it made such a contract, or entered into such an agreement as a part of this settlement, between these people, of a claim made by the plaintiff, then it became a binding contract, and the company would be liable for a breach thereof, if it did breach it. If there was no such contract, then the plaintiff has no cause of action, and no ground of recovery in this case.

Now, as I have said, whether there was such a contract or not, is for you to determine from the testimony. You have heard all the evidence in the case, and it is the peculiar province of the jury to pass on that question. In doing so you should consider the relation of these parties, the circumstances surrounding this transaction, the written statement or receipt, or

whatever it may be, given by the plaintiff at the time of this alleged settlement, his explanation thereof, the testimony of the other parties, the probability of a company entering into such a contract, and from all that, determine whether there was such an agreement or not. If there was not, then the case ends, so far as this conclusion is concerned, and your verdict would necessarily be for the defendant. If you believe from the evidence there was such an agreement as the plaintiff claims, and the company did, as a part of his settlement with him for this alleged claim, agree to give him employment as long as he wanted it, then the next issue in the case is whether he himself breached that contract. Now, there is some evidence on behalf of the defendant tending to show that after the plaintiff had worked for the defendant for a certain time, he quit or ceased work in order to obtain higher wages, and that he made, or attempted to make arrangements with some other employes not to take his place, in order to force the company to increase his compensation. Now, if he did that, that would be a breach of his agreement, if there was one. The company agreed, according to his statement, to give him employment as long as he wanted it, and that obligated him to continue in the employment unless the cessation was due to some physical acts, I suppose, like illness or something of that kind, or by mutual consent. He might take a lay-off if the company consented to it, or it was agreeable to them, but he couldn't use that contract as a means of forcing or compelling the company to increase his wages. Whether he did that or not, it is a ques-

tion of fact, there is a dispute as to that, and that is also a question. If you find he did quit, or cease employment with the intention, or purpose of compelling the company, or trying to compel the company to increase his wages,—that is what he struck for—then, it would be a violation of this contract on his part, and would prevent his recovery in this case. If he did not, and there was a contract as he alleges, then there is no other grounds set up in answer as I understand it, to justify his discharge. There is some evidence that he was probably discharged because he had brought some action against the company, but if the company entered into a contract to give him employment as long as he wanted it, and his work was satisfactory, and the pleadings admit that it was, then they couldn't breach that contract and justify such breach on the theory that he had sued the company in some other action, and on some other claim of liability. So that the two questions, to begin with, are, first, whether there was such a contract as the plaintiff claims. Now, there is a good deal of evidence here in reference to the statement and promises of the manager or superintendent of the defendant company to give this plaintiff steady employment. If such statements were made, and the evidence shows that they were, the superintendent so states himself, that would not of itself constitute a contract, for if one of you should say to a man who is working for you, that "I will give you employment as long as you want it", it wouldn't bind you to keep him in your service always. You would have a right to discharge him at any time you wanted

to, because the contract was based on no consideration, and he had paid nothing for the promise. So, if that is all that occurred in this case, that would not amount to an agreement. In order to constitute an agreement, it must be supported by consideration, and in order to find the consideration in this case, the contract must have been a part of the settlement of the claim made by the plaintiff against the defendant for damages, or compensation on account of the injury he received while in their service, or as a result thereof.

Now, there has been something said about the notice required to be given to the company by its employes before ceasing work. As I understand that, from the testimony and the law, it is simply that in order that an employe may demand his pay, or his wages at the time he quits, he must give three days' notice, but if he quits without giving the three days' notice, he is still entitled to his compensation, but he has to wait for the regular pay day, the same as the other employes. If he wants his pay, at the time he quits, he must give three days' notice, and then the company is obliged to pay him at that time, and that is about all that amounts to, I suppose in this case.

Now, if you find there was a contract or agreement by the company supported by a sufficient consideration, that it would give the plaintiff employment as long as he wanted it, and that he didn't himself voluntarily sever that relation, then it will be necessary for you to determine the amount of damages to which he would be entitled for a breach of the contract.

Now, the measure of damages, the purpose is compensation, and the measure is such sum as would compensate him for a breach of this contract, if there was such a contract, and if it was breached by the defendant. In a case of this kind, it was the duty of the plaintiff to make whatever effort he could to obtain employment elsewhere, and the measure of his damages would be the difference between what he could earn in the mill under this contract with the defendant, if there was such a contract, and what he is able to earn outside the mill or in any other employment that he might get, if there is any difference. Now, that is a question for you to determine, if you conclude that the plaintiff is entitled to recover.

Now, the burden of proof is on the plaintiff in this case to sustain the allegations of his complaint, and show that the contract was made as he claimed it was made; by burden of proof, I mean that he must simply make out the best case, the evidence must preponderate in his favor. If you believe it is evenly balanced, then he has failed to comply with the rules of law, and the verdict should be against him, but he is not obliged to prove his case beyond a reasonable doubt.

You are the judges of all questions of fact in this case, and the credibility of all the witnesses. Every witness is presumed to speak the truth. You have heard these witnesses testify, you have noticed their appearance and manner on the witness stand, and now it is for you to determine and say what weight is to be given to their testimony, and determine where the truth lies in this case.

Mr. GOSS: May it please the Court, I wish to be allowed an exception in general, from the failure of the Court to give each instruction requested by the defendant and not given by the Court. I wish an exception for the failure of the Court to give instructions 5 and 6 as requested.

COURT: I gave the others in substance, but if you want that exception—

Mr. GOSS: I wish an exception to the failure of the Court to give each instructions requested by the defendant and not given by the court, and then there was one instruction in which you said in substance that the plaintiff had arranged to quit his work, and had endeavored to arrange with another employe not to take his job, and you went on to say, "If you find this a fact" etc. I wish to except to that instruction.

Mr. SMITH: Plaintiff has no exceptions.

Copy received August 25, 1914.

WM. T. STOLL,

Attorney for Plaintiff.

Filed September 3, 1914.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 28th day of August, 1914, there duly was filed in said Court, a Petition for Writ of Error, in words and figures as follows, to wit:

Petition for Writ of Error.

*In the District Court of the United States for the
District of Oregon.*

JOHN A. PARKER,

Plaintiff,

vs.

C. A. SMITH LUMBER AND MANUFACTURING
COMPANY, A Corporation,

Defendant.

C. A. Smith Lumber and Manufacturing Company, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury, and the judgement entered on the 18th day of June, 1914, comes now by John D. Goss, its attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this court be suspended and stayed until the

determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will ever pray.

JOHN D. GOSS,
Attorneys for Defendant.

Copy rec'd Aug. 25, 1914.

WM. T. STOLL,
Att'y for Pl'ff.

Filed August 28, 1914.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 28th day of August, 1914, there was duly filed in said Court, an Assignment of Errors, in words and figures as follows, to wit:

Assignment of Errors.

In the District Court of the United States in the District of Oregon.

JOHN A. PARKER,
Plaintiff,

vs.

C. A. SMITH LUMBER AND MANUFACTURING
COMPANY, A Corporation,
Defendant.

Now comes the defendant, C. A. Smith Lumber and Manufacturing Company, by its attorney John D. Goss, and says that in the proceedings and in the final judgment in the above entitled action, dated June 18, 1914, for Twenty-five Hundred Dollars damages

and costs, in favor of the plaintiff, the court erred in the following particulars, which the defendant assigns as errors, and upon which it will rely in prosecuting its writ of error herein:

I.

The court erred in overruling defendant's motion for a nonsuit at the close of plaintiff's case.

II.

The court erred in overruling defendant's motion for a continuance or adjournment because of the absence of material witnesses who were detained by an accident while on their way to the place of trial.

III.

The court erred in overruling defendant's renewal of the motion for a continuance or adjournment on the ground of the absence of important witnesses who were detained by accident, and were by accident prevented from reaching the place of trial.

IV.

The court erred in overruling defendant's motion for a directed verdict in favor of the defendant.

V.

The court erred in refusing to instruct the jury as follows: "Before you may find a verdict for the plaintiff in this case, it is necessary that you find, gentlemen of the jury, that there was a contract between the plaintiff and the defendant, whereby the defendant

agreed for a consideration, to give the plaintiff employment, as long as the plaintiff desired it”.

VI.

The court erred in refusing to instruct the jury as follows: “If you find that there was such a contract, you must also find that that contract was still in existence at the time when the defendant refused to employ the plaintiff.”

VII.

The court erred in refusing to instruct the jury as follows: “In this connection, there has been evidence introduced going to show that the plaintiff, of his own accord, quit work for the defendant, and you are instructed that if you find from the preponderance of the evidence that the plaintiff of his own accord, quit working for the defendant, whether it was for the purpose of procuring higher wages, or whatever the motive may have been, then such act on his part terminated any contract or liability on the part of the defendant to furnish the plaintiff with employment, and the discharge of the plaintiff by the defendant thereafter, or the refusal of the defendant thereafter to employ or continue to employ the plaintiff would not render the defendant liable in damages therefor. And if you find such to be the facts, your verdict should be for the defendants”.

VIII.

The court erred in refusing to instruct the jury as follows: “In determining whether or not a contract

for employment, such as the plaintiff claims herein existed, you are to be governed by the final agreement that was actually made in settlement of the claims of the plaintiff, and although the plaintiff may have been promised work by the defendant upon numerous prior occasions, such promises would be mere inducements, without consideration, and would not of themselves make a contract, nor would they by reason of having been repeatedly made during the negotiations, be for that reason alone a part of the contract of settlement."

IX.

The court erred in refusing to instruct the jury as follows: "The defendant under the pleadings herein, and under the facts as disclosed in the evidence, would not be responsible for the acts of the physician, Dr. Dix, nor for his failure to properly care for the injuries of the plaintiff, if he did so fail to care for the plaintiff, but under the relationship between the plaintiff and the defendant, it was incumbent on the defendant only to use proper care in the selection of a physician, and if they used reasonable care in selecting a physician and the physician so selected was one of good reputation and ability, the defendant's full duty was performed, and the defendant could not be held responsible for any specific acts of negligence or malpractice of which the physician might be guilty."

X.

The court erred in refusing to instruct the jury as follows: "If you find from the preponderance of the

evidence in this case, therefore, that the defendant had used due care in the selection of a physician, and that the claim of the plaintiff with regard to his injury was based upon the neglect or malpractice of the physician, then I instruct you that such a claim would not be a valid claim as against the defendant, and the settlement thereof could not be the basis of a contract or compromise between the plaintiff and the defendant, and any promise of the defendant with regard thereto made to the plaintiff would be without consideration and not binding in law, and the failure of the defendant to keep such promise, even though you find such failure, would not render the defendant liable in damages to the plaintiff herein.”

XI.

The court erred in giving the jury the following instructions: “Now, there is some evidence on behalf of the defendant tending to show that after the plaintiff had worked for the defendant for a certain time, he quit or ceased work in order to obtain higher wages, and that he made, or attempted to make arrangements with some other employes not to take his place, in order to force the company to increase his compensation. Now, if he did that, that would be a breach of his agreement, if there was one. The company agreed, according to his statement, to give him employment as long as he wanted it, and that obligated him to continue in the employment unless the cessation was due to some physical acts, I suppose, like illness or something of that kind, or by mutual consent. He might take a lay-off, if the company consented to it, or it

was agreeable to them, but he couldn't use that contract as a means of forcing or compelling the company to increase his wages. Whether he did that or not, is a question of fact, there is a dispute as to that, and that also is a question.

XII.

The court erred in overruling defendant's demurrer to the complaint upon the ground that the complaint did not state facts sufficient to constitute a cause of action against the defendant.

XIII.

The court erred in overruling defendant's demurrer to the complaint on the ground set forth in paragraph separately numbered 1st in defendant's demurrer.

XIV.

The court erred in overruling defendant's demurrer to the complaint upon the ground set forth in paragraph separately numbered 2nd in defendant's demurrer.

XV.

The court erred in overruling defendant's demurrer to the complaint upon the ground set forth in paragraph separately numbered 3rd in defendant's demurrer.

XVI.

The court erred in overruling defendant's motion for a new trial upon the grounds of absence of material witnesses.

XVII.

The court erred in overruling defendant's motion for a new trial on the ground of absence of material witnesses who were prevented by accident from attending the trial.

XVIII.

The court erred in overruling defendant's motion for a new trial upon the ground of newly discovered evidence.

WHEREFORE, defendant prays that the judgment of the district court of the United States for the district of Oregon be reversed, and that said district court be instructed to grant a new trial of said cause.

JOHN D. GOSS,
Attorney for Defendant.

Copy rec'd Aug. 25, 1914.

WM. T. STOLL,
Att'y for Pl'ff.

Filed August 28, 1914.

G. H. MARSH,
Clerk.

And afterwards, to wit, on Friday, the 28th day of August, 1914, the same being the 47th judicial day of the regular July, 1914, term of said Court; Present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

Order Allowing Writ of Error.

JOHN A. PARKER,
Plaintiff,

vs.

C. A. SMITH LUMBER AND MANUFACTURING
COMPANY, A Corporation,
Defendant.

Upon motion of John D. Goss, Esq., attorney for defendant, and upon filing a petition for a writ of error, It is ordered that the writ of error is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the judgment heretofore entered, and that the amount of the bond on said writ of error be and hereby is fixed at Thirty-five Hundred Dollars (\$3,500.00).

R. S. BEAN,
Judge.

Filed August 28, 1914.

G. H. MARSH,
Clerk.

And afterwards, to wit, on the 28th day of August, 1914, there was duly filed in said Court, a Superseedeas Bond on Writ of Error, in words and figures as follows, to wit:

Supersedeas Bond.

*In the District Court of the United States in and for
The District of Oregon.*

JOHN A. PARKER,
Plaintiff,

vs.

C. A. SMITH LUMBER AND MANUFACTURING
COMPANY, A Corporation,
Defendant.

KNOW ALL MEN BY THESE PRESENTS:
That we, C. A. Smith Lumber and Manufacturing
Company, as principal, and American Surety Company
of New York, as surety, are held and firmly bound unto
the above named John A. Parker in the sum of Thirty-
Five Hundred Dollars (\$3,500.00), to be paid to the
said John A. Parker, for the payment of which well
and truly to be made we bind ourselves, and each of
us, and each of our successors, jointly and severally,
firmly by these presents.

Sealed with our seals, and dated this 28th day of
August, in the year of our Lord, one thousand, nine
hundred, fourteen.

WHEREAS, the C. A. Smith Lumber and Manu-
facturing Company has prosecuted a writ of error to the
United States Circuit Court of Appeals for the Ninth Cir-
cuit, to review the judgment rendered in the above enti-
tled action in the district court in and for the district of

Oregon, entered June 18, 1914, for Twenty-five Hundred Dollars damages and costs in favor of the plaintiff;

NOW THEREFORE, the Condition of this Obligation is Such: That if the above named C. A. Smith Lumber and Manufacturing Company shall prosecute its said writ of error to effect and answer all damages and costs if it fail to make this plea good, then this obligation shall be void; otherwise to be and remain in full force and virtue.

C. A. SMITH LUMBER AND MANUFACTURING
COMPANY,

By DAVID NELSON,
Resident Agent.

Signed, sealed and delivered in the presence of:

EVELYN JOHNSON,
HERBERT S. MURPHY,
as to C. A. SMITH LUMBER
& MF'G. CO.

(Seal of the C. A. Smith Lumber & Mf'g. Co.)

AMERICAN SURETY COMPANY OF NEW YORK

(Seal of the American Surety Co.)

By W. J. LYONS.

Attest: W. A. KING,
Resident Ass't. Secretary.
W. A. KING, Agent.

United States of America
District of Oregon,—ss.

On this, the 25th day of August, 1914, before me, a notary public in and for the State of Oregon, personally appeared, David Nelson, to me personally known, who, being by me duly sworn, did depose and say: That he resided in Marshfield, Oregon, that he is the Resident Agent of the C. A. Smith Lumber and Manufacturing Company, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

In Testimony Whereof, I have hereunto set my hand and affixed my notarial seal the day and year first in this my certificate written.

HERBERT S. MURPHY,

(Notarial Seal)

Notary Public for Oregon.

Approved, Aug. 28, 1914.

R. S. BEAN,

Judge.

Filed August 28, 1914.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 11th day of September, 1914, there was duly filed in said Court, a Praecipe for Transcript, in words and figures as follows, to wit:

Praeceptum for Transcript.

*In the District Court of the United States in and for
The District of Oregon.*

Praeceptum for Printing Record.

JOHN A. PARKER,
Plaintiff,

vs.

C. A. SMITH LUMBER & MANUFACTURING
COMPANY, A Corporation,
Defendant.

To G. H. Marsh, Clerk of the United States District
Court, District of Oregon:

You are hereby requested and directed to cause to
be printed in the record on appeal in the above entitled
case, the following papers:

1. Transcript on Removal.
2. Demurrer.
3. Stipulation as to Demurrer.
4. Order on Demurrer.
5. Opinion on Demurrer.
6. Answer.
7. Reply.
8. Judgment.
9. Verdict.
10. Motion for New Trial.
11. Affidavits, ditto.
12. Order, ditto.

13. Petition for Writ of Error.
14. Assignment of Errors.
15. Order, allowing Writ of Error.
16. Bond on Appeal.
17. Writ of Error.
18. Citation.
19. Bill of Exceptions, and Exhibit.
20. Clerk's Certificate.

You are also requested to have printed a sufficient number of copies to comply with the rules of practice of the United States Circuit Court of Appeals for the Ninth Circuit.

JOHN D. GOSS,

Attorney for Plaintiff in Error.

Filed September 11, 1914. G. H. MARSH,
Clerk.

CLERK'S CERTIFICATE TO TRANSCRIPT.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record upon Writ of Error in the case of John A. Parker, Plaintiff and Defendant in Error, against the C. A. Smith Lumber & Manufacturing Company, a corporation, Defendant and Plaintiff in Error, in accordance with the law and the rules of this Court, and in accordance with the praecipe of the Plaintiff in Error, and that the said record is a full, true and correct transcript of the record and proceedings had in

said Court, in accordance with said praecipe, as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing record is \$., and that the same has been paid by the Plaintiff in Error.

In testimony whereof I hereunto set my hand and affix the seal of said Court, at Portland, in said District, on the day of, 1914.

. Clerk.